

REMOVAL OF THE CHEROKEES WEST OF THE MISSISSIPPI.

AUGUST 27, 1842.

Read, and laid upon the table,

Mr. HARRIS, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the resolution of this House of the 9th July, 1842, directing that committee to inquire into and report upon all the facts and circumstances connected with the contract for the removal of the Cherokee Indians west of the Mississippi, beg leave to report, in part:

That they proceeded, under the authority of the resolution above mentioned, with all the diligence in their power, to the discharge of the duties assigned them. A cursory examination of the papers connected with the case, in the War Department, convinced them of the magnitude as well as the importance of the investigation. It was apparent that, in order to do justice to all parties concerned, or in any wise connected with this subject, nothing short of the most full, entire, and thorough investigation of the whole of the transactions relating to the removal of these Indians would suffice. Accordingly, they called upon the Secretary of War to furnish copies of all the papers in his office, or in his possession, which could in any manner elucidate this subject, and enable the committee to prosecute the investigation required of them. They were found to be very voluminous, and it required considerable time to copy them for the committee. Such, however, as would furnish a basis for the committee to commence taking testimony were first furnished, and other portions were sent in, from time to time, as fast as copies could be made out, the last portions of which have only been furnished a few days since. In the mean time, the committee proceeded to examine and take the depositions of such witnesses as were presented to them by any of the parties concerned.

But time has scarcely been allowed the committee to do more than to arrange the papers in order to have them printed. This they desire to be done—a thing, in fact, which is absolutely necessary to a proper prosecution of the investigation—so that they may resume the subject at the earliest day of the next session, with such additional facts and proofs as they may be able to procure. The fullest and most ample inquiry into all the circumstances of this transaction is imperatively demanded, as well by the interests of the United States as from considerations of public policy, and the character and standing of many who have been officially or otherwise connected with this subject.

ROOM OF COMMITTEE ON INDIAN AFFAIRS,

July 21, 1842.

SIR: In compliance with a resolution adopted by the House of Representatives on the 9th instant, a copy of which I herewith transmit to you, I have been instructed by the Committee on Indian Affairs to procure copies of all such papers and documents on file in the Department of War as may be necessary to enable the said committee to perform the duties with which they have been charged by the said resolution, that is to say: copies of all papers and documents on file or in possession of the Department which relate to the contract for the removal of the Cherokee Indians to the west of the Mississippi river, and the settlement of the claim or claims arising under contract; copies of the accounts of the contractor or contractors who removed them; copies of all reports made by the Commissioner of Indian Affairs to the President or Secretary of War relative to the settlement and allowance of the account or claim of the said contractor or contractors; copies of all bids or offers made to the Government by any person or persons, other than the contractors, for the removal of the said Indians; also, a statement of the amount paid on account of said contract, and to whom paid, and on what authority; also, a statement of the cost of the removal, per thousand souls, as estimated by the Department, the amount contracted for, and the amount actually paid; also, by what officer the account or claim of the said contractor or contractors was settled and allowed; whether there was any appeal from such settlement, and what was the decision on such appeal; whether the decision was final or not; and, if not, by what officer and by what authority the account was re-opened; when was it finally settled, and out of what fund was said account paid.

May I inquire at what time it is probable copies of such papers can be furnished to the committee? This inquiry is made because it is important that the investigation should be speedily commenced, as witnesses, deemed necessary by those interested, are now nearly all in this vicinity, though usually resident at the distance of many hundred miles from this city.

It has been suggested to the committee that a copy of the report of the Commissioner of Indian Affairs, made some time since, either to the President or Secretary of War, will be sufficient to enable them to proceed intelligently with the examination of the witnesses now present. If there be such a report, be good enough to furnish the committee with a copy of it as early as practicable.

With great respect, your obedient servant,

JAMES COOPER,

Chairman Com. Indian Affairs, Ho. of Reps.

HON. JOHN C. SPENCER,

Secretary of War.

WAR DEPARTMENT, July 28, 1842.

SIR: I now respectfully transmit herewith some of the papers required for the Committee on Indian Affairs by your letters of the 21st and 27th instant, viz: a report of the Commissioner of Indian Affairs, with copies of his former reports to this Department, with the approval of Mr. Poinsett, and the opinion of President Van Buren thereon; a report of the Second

Auditor, with a copy of the decision of my predecessor, Mr. Bell, made to the accounting officers, accompanying the claims of the Cherokee nation for expenses incurred in their removal ; also, a copy of the interrogatories by the attorney and council of the Cherokee nation to General Scott, on the same subject, together with his answers and notes. A copy of the address of the President to the Cherokees, in September last, is transmitted herewith, as required by your letter of yesterday.

Very respectfully, your obedient servant,

J. C. SPENCER.

HON. JAMES COOPER,

Chairman Committee Indian Affairs, Ho. Reps.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES, *July 9, 1842.*

On motion of Mr. CAVE JOHNSON,

Resolved, That the Committee on Indian Affairs be, and are hereby, instructed to inquire into the contract for the removal of the Cherokee Indians to the west of the Mississippi ; the amount contracted to be paid for the removal ; the amount actually paid ; how and by what officer the account of the contractor was settled and allowed ; whether there was any appeal from such settlement, and the decision on the appeal, and whether the decision was final or not ; by what officer and what authority the account was re-opened and finally settled and allowed, and out of what fund such account was paid, to whom paid, and on what authority : also, to inquire whether any and what offers had been made for their removal, and why not accepted ; and whether any further and what further action of Congress should be had for the protection of the Cherokees, or to guard the public Treasury, and that said committee have power to send for persons and papers.

Attest :

M. S. CLARKE, *Clerk.*

WAR DEPARTMENT,

Office of Indian Affairs, July 22, 1842.

SIR : Herewith I send a copy of a report made by me to the Secretary of War, on the 8th August, 1840, on a claim preferred by Mr. John Ross, with an endorsement thereon by Mr. Poinsett. An appeal was taken to the President of the United States, a copy of whose opinion I also transmit, as well as a copy of an endorsement made by the then Secretary of War, on a second application addressed to the late President by the counsel of Mr. Ross, after he had procured additional testimony—understanding, from your letter to the Hon. Mr. Cooper, that these decisions should accompany the papers to be now sent to the Committee on Indian Affairs.

I think proper to mention that, in my statement of the sums to be deducted, as I thought, from Mr. Ross's claim, there was an error of calculation, which was voluntarily corrected, by a letter to the counsel of Mr. Ross, before the first appeal was laid before the Chief Magistrate, which, nevertheless, not being laid before the President, but the matter treated as if the correction had not been made, I communicated to the Secretary of

War. These papers will, I presume, go before the committee hereafter, but, to prevent misapprehension, they are referred to here.

Very respectfully, your most obedient servant,

T. HARTLEY CRAWFORD.

Hon. J. C. SPENCER, *Secretary of War.*

WAR DEPARTMENT,

Office Indian Affairs, August 8, 1840.

SIR: A claim has been submitted by John Ross, Esq., for "expenses incurred in the removal of the Cherokees, under an arrangement with Major General Winfield Scott." The account exhibited is for amount of subsistence and forage issued to the Cherokee emigrants prior to their departure West, and for which a requisition was made on General Scott, but not yet paid, and is now on file in the office of Indian Affairs, War Department; also, a certified copy of the abstract furnished the principal superintendent of the emigration by the contractor - - \$92,781 50

And for subsistence and forage, also issued to Cherokee emigrants, prior to their departure, a part of which was omitted to be included in the above abstract, and the balance issued after said abstract was made out, as will appear by comparing dates with the abstract on file, and the one herewith - - - - - 1,625 88½

Amount of expenses for detachment No. 1, per voucher herewith, and so to No. 13 inclusive - - - - - 1,263,338 48½

\$1,357,745 86½

By cash received of Captain John Page, United States disbursing agent, on sundry requisitions drawn on Major General Winfield Scott - - - - - 776,398 98

Balance due the Cherokee nation - - - - - \$581,346 88½

On the 23d May, 1838, the Secretary of War authorized General Winfield Scott, by letter of that date, "to enter into an agreement with the agents of the nation for the removal of their people. The expenses attending the emigration of the Cherokees are now fully ascertained by past experience; and it is presumed you will find no difficulty in making such an arrangement as, while it will secure their comfortable removal in the manner most agreeable to their chiefs and head men, will effectually protect the interests of the United States, and prevent all unnecessary delay or useless expenditures." In consequence of these instructions, a communication was made on the 23d July, 1838, by John Ross and seven other Cherokees, to General Scott, proposing "that the Cherokee nation will undertake the whole business of removing their people to the west of the river Mississippi; that the emigration shall commence at the time stipulated in a pledge given to you by our people as a condition of the suspension of their transportation, until the sickly season should pass away, unless prevented by some cause which shall appear reasonable to yourself; that the *per capita* expense of removal should be based on the calculation

of one wagon and team and six riding horses being required for fifteen persons." To this proposal General Scott, on the 25th July, 1838, acceded, on the condition that the promises made him in writing by certain chiefs and head men on the 19th of June should be observed; that runners should be sent out to bring in all the Indian families and individuals who might remain out, and are not citizens of the United States, or have not received permission to become such; that, with this exception, and that of such members of the treaty party as may not choose to remove, under the directions of Mr. Ross and his associates, the Cherokee agents "shall cause all their people, now remaining east, and who may, at the time, be able to travel, including fugitive Creeks among them, to be put in motion, in convenient detachments, either by land or water, and transported, without unnecessary delay on the routes, to the Cherokee country west of the Mississippi, beginning the movement as early as the 1st of September next, and continuing to send off parties at intervals not exceeding three days, so that all the emigrants, able to travel within that time, shall be in motion for the west by the — of the ensuing month, (October.) Such Indians as, within that time, may not be able to travel by land shall, if the rivers be not up, be permitted to remain until the next rise of waters, and, in the mean time, have, as attendants, a small number of their families or friends." It was answered, by the Cherokee delegation, that they acceded to the conditions with the understanding "that we may be allowed the two entire months of September and October to get all our people in motion for the West, and that we shall not be required, positively, to send off a detachment 'at intervals not exceeding three days.'" In this communication was enclosed a resolution of "the committee and council, and people in general council convened," authorizing and empowering Messrs. John Ross, Richard Taylor, Samuel Gunter, Edward Gunter, James Brown, Elijah Hicks, Sitawakee, and White Path, "to make and enter into any and all such arrangements with Major General Winfield Scott, on the part of the United States, which they may deem necessary and proper for effecting the entire removal of the Cherokee people from the east to the west side of the Mississippi river, and also to enter into such further arrangements with the commanding general, in relation to the payment of such sums of money by the United States as may be needed for the removal and subsistence of all the Cherokee people." The conditions of the 19th June, referred to by General Scott, are contained in a letter from him to G. Lowry, F. Foreman, L. W. Hildebrand, J. Bushyhead, L. Ross, Going Snake, and other chiefs and head men of the Cherokee people, in which he states that he has received two memorials, "numerously signed by yourselves and other Cherokees, dated respectively the 9th and 11th of this month, praying, 1st, that the collection of the Cherokees, by the troops, for emigration, may be delayed or relaxed; and, 2d, that the families and individuals so collected, or who have voluntarily come in, may not be sent off to the west of the Mississippi before the next autumn."

"Under my instructions from the President, no delay or relaxation can be permitted in the collection of the whole Cherokee people."

"In respect to the second proposition, I am disposed to grant indulgence, if the chiefs and head men present will give me a written pledge, for themselves and the other chiefs and head men absent, to the following conditions:

"1st. That each will discountenance and suppress, among the Cherokee people, the idea that there is the slightest intention, on the part of the

United States, to suspend the emigration beyond the first of September next ; for, in all that month, it is my solemn expectation and purpose to put in motion, from the emigrating depots, every Cherokee east, for the Cherokee country west of the Mississippi.

"2d. That the chiefs and head men will, in good faith, exert their authority to prevent their people from escaping or straggling from the camps which may be assigned, or leaving the latter beyond the limits which will be prescribed, except on special written permission, to be signed by the nearest commander of troops, or by the superintendent of Cherokee emigration.

"3d. The same authority will be employed to preserve good order among the Indians in their respective camps, to prevent drinking, to prevent any injury to the citizens or their property, and to aid the emigrating officers and agents in obtaining an exact list or register, by names, families, ages, and sexes, of all the Cherokees who are to be emigrated."

These conditions were subscribed to on the same day by the individuals addressed by General Scott and many others.

General Scott again wrote to the delegation on the 28th July, saying that the power conferred by the resolution was sufficient, but that the emigration must re-commence on or before the 1st of September, and be closed by the 20th of October, with the exception of the sick or superannuated, &c., and that upon estimates being submitted, specifying the immediate objects, if they appear to be reasonable, they shall be promptly complied with. On the 31st July estimates were submitted, of which the following is a copy :

Estimate for the emigration of a party of one thousand Cherokees to their country west of the Mississippi; distance 800 miles, 80 days going.

Fifty wagons and teams, (20 persons to each wagon,) at a daily expense of \$350, including forage	-	-	\$28,000 00
Returning, \$7 each for twenty miles	-	-	14,000 00
250 extra horses, 40 cents each per day	-	-	8,000 00
Ferriages, &c.	-	-	1,000 00
80,000 rations, at 16 cents each	-	-	12,800 00
Conductor, \$5 per day	-	-	400 00
Assistant conductor, \$3 per day	-	-	240 00
Physician, \$5 per day	-	-	400 00
Physician returning, \$15 for every 100 miles	-	-	120 00
Commissary, \$2 50 per day	-	-	200 00
Assistant commissary, \$2 per day	-	-	160 00
Wagon master, \$2 50 per day	-	-	200 00
Assistant wagon master, \$2 per day	-	-	160 00
Interpreter, \$2 50 per day	-	-	200 00
			<hr/>
			65,880 00
			<hr/>

This estimate made the expense of emigrating each 1,000 Cherokees \$65,880, which General Scott, on the 1st of August, thinking it to be very extravagant, requested the delegation to reconsider. This they did, and the next day reaffirmed its reasonableness; whereupon General Scott wrote to them : " I perceive that, after a full consideration, you adhere to

the calculation of \$65,880, with a slight addition for soap, for the comfortable emigration, by land, of every thousand Cherokees from this to their new country west of the Mississippi," and approved the estimate.

This brings the arrangement to a conclusion, and makes a contract, in my opinion, between General Scott, on behalf of the United States, and the Cherokee delegation, for the removal of the Indians to the west, from the east side of the Mississippi. Having given this historical account of the matter, I proceed to speak of two items for subsistence before they marched, and then of the claim for the time beyond eighty days, irrespective of the general principles that appear to me to govern this claim, and which are reserved for after consideration.

Lewis Ross is the real claimant of the \$92,781 50, and also, I infer, of the \$1,625 88½; but with him General Scott had nothing to do, nor have the United States now.

The only true principle on which this business can be settled is by having reference to those interested in the fund, not the Cherokees east only, but those who, by the 15th article of the treaty, are entitled to the *per capita* dividend, "according to the census just completed, and such Cherokees as have removed west since 1833, who are entitled, by the terms of their enrolment and removal, to all the benefits resulting from the final treaty between the United States and the Cherokees east." The arrangement was made with the Cherokee nation east, by their agents, not to enable those agents, or any of them, or those they thought fit to employ, to make profit out of the tribe, but to defray only the reasonable expenses of their removal. It is true the sum agreed to be paid was fixed on as such reasonable expenditure, and, having been acceded to by the United States in their trust character, is closed, as far as the United States are concerned, by the payment of the stipulated amount: but the present claim is presented on equitable grounds; and if it shall appear that more money has been already paid than will compensate the individuals employed for any outlay they have made, equity is against any further allowance. The charge is, besides, not warranted or authorized by any United States agent, nor within the scope of the authority conferred on General Scott, who repeatedly admonished the parties against such expenditures. Nor could the general "see how such large issues of rations to persons in the depots, or around them, could have been made by Mr. Lewis Ross under his contract with the delegation." Mr. Ross, it is true, said the Cherokee rations (with sugar and coffee) were preferred, and were issued as fast "as the detachments were organized for the road, without waiting for the actual march, which was delayed more than thirty days by the drought." The postponement of the emigration might have been imperiously demanded, but in point of fact it took place on two memorials, of 9th and 11th of June, 1838, presented by Lewis Ross, J. Bushyhead, and others, as already recited in this paper. This delay in the removal was regarded as an indulgence to the Cherokees, and certain conditions imposed, which they willingly and thankfully agreed to, and whatever rations Mr. L. Ross issued, they were delivered without authority. If those who received them were alone to be the recipients of the balance, it would make very little difference whether the claim for them was allowed or not; but it is not so: others are deeply interested in the distribution of the fund. The treaty party east, who were emigrated without Mr. Ross's agency, received no rations from him or his

brother Lewis, and the Cherokees west, who are entitled, must be regarded.

Has Mr. Lewis Ross received a fair return for his services and expenses under the contract with his brother, and, over and above that, money sufficient for the subsistence of the Cherokees before they marched?

The protest of the Cherokees, (John A. Bell and others,) dated 20th August, 1838, shows what was then thought of the contract made by the Cherokee delegation with Lewis Ross, for subsistence on the route, at or immediately after it was made. The protestants say that if the contract had been open to competition, it would have been taken for at least \$100,000 less, &c. General Scott did not think proper to interfere, nor is that material for the present purpose. On the 18th August, N. A. Bryan, R. E. Clements, — Anderson, and Peirce B. Anderson, proposed to give Lewis Ross \$40,000 for his contract, which he declined, with the approbation of John Ross and others; and it is proved that George D. Gordon, who became interested with Lewis Ross in his contract to the extent of one-seventh, sold out his interest to said Ross for \$15,000, making a purchase at the rate of \$105,000 profit on the whole contract. It is likewise proved, by John C. McCain, that he was employed by Lewis Ross to assist him in the execution of his contract, and that he kept regular accounts of the purchases with the payment of which he was charged, and that he is enabled to speak pretty accurately of the cost of the various articles composing the ration, which, from such knowledge, he makes (giving the details) equal to nine cents per ration. He deposes "that, after all the detachments arrived at Fort Gibson, deponent examined the accounts of disbursements; and, upon comparing it with the amounts which had been and were to be paid to Ross under the contract, he is satisfied that a clear profit of more than \$150,000 was realized by Ross and his co-partners." The ration is estimated by another witness at seven and a quarter cents; but, putting it at nine, the difference between that and sixteen cents was an exceedingly large profit. The horse ration is computed by one of the witnesses (G. D. Gordon) at twenty-five and a half cents; L. Ross received forty cents.

From this brief statement it is manifest that the profits made were enormous; and I concur with General Scott in the opinion that the profits of the Ross contract ought to belong to the Cherokee nation. (See his letter of 25th August, 1838, to John Ross, &c.) I am therefore of opinion that the Department is not called on, by principles of equity, to allow these items of Mr. Ross's account, but is required, by a proper regard to all interested, to reject it.

I have thought it best to examine this claim as if legally and properly before me; but there is, in truth, no evidence whatever on file, or accessible by me, in its favor. The requisition referred to was undoubtedly presented to General Scott; for, in his letter of 14th November, 1838, to Captain Page, he says: "You will perceive that I have said I shall refer the whole subject to you for examination. You will therefore see that the abstracts are fully supported by the *returns for provisions*, soap, and forage; that similar issues were not made for the same time, or a part thereof, to the same persons, horses, ponies, and mules; and that the prices charged for the several articles, which you shall find have been properly issued, are not too high. So much of the requisition as you shall, under the principles and limitations laid down by me, find to be justly claimed,

you will state and certify, in order that the same may, at the end of the emigration, be referred to the War Department for payment by the United States, as the trustees, to a certain extent, of the Cherokee people." But neither the requisition, nor "a certified copy of the abstracts furnished the principal superintendent of the emigration by the contractor," is in this office, much less the *returns for provisions*, soap, and forage, required by General Scott to support the abstracts. Of the \$1,625 88 $\frac{1}{4}$ worth of rations, said to be in part omitted in said abstracts and in part issued after the abstracts were made out, there is no evidence whatever. If these several papers were, however, exhibited, my view of the claim, which supposes them present, would be unchanged, but they might enable me to show, on a comparison with the accounts of the Government agents, that there were additional reasons for disallowing this item of the claim.

The next branch of the inquiry relates to the several items, running from one to thirteen, in which Mr. Ross alleges that there were due, by the contract with General Scott, \$1,263,338 48, of which he admits he has received \$776,398 98, and claims a balance of \$486,939 50.

This is a very large claim, and I have endeavored to examine it with great care.

Am't of expenses for detachment No. 1, per voucher herewith				\$67,884 13 $\frac{3}{4}$
Do	do	2,	do	72,317 10 $\frac{3}{4}$
Do	do	3,	do	105,923 12 $\frac{1}{2}$
Do	do	4,	do	97,529 20
Do	do	5,	do	102,226 37 $\frac{1}{2}$
Do	do	6,	do	95,359 85
Do	do	7,	do	103,759 66 $\frac{3}{4}$
Do	do	8,	do	111,741 45
Do	do	9,	do	84,558 45
Do	do	10,	do	112,504 80 $\frac{1}{2}$
Do	do	11,	do	106,730 61
Do	do	12,	do	182,407 84
Do	do	13,	do	20,395 87 $\frac{1}{4}$
				<hr/>
				1,263,338 48 $\frac{1}{2}$

The first abstract is for the removal of 729 persons, and amounts to \$67,884 13 $\frac{3}{4}$. The returns of Captain Page say that this detachment consisted of 710; and Captain Stephenson's return of those mustered west was 654. It was for the removal of those Indians east that Ross and his associates were to be paid. Captain Stephenson's account of the number received ought, therefore, to be the guide. Ross charges for 729; Stephenson reports 654. Difference 75. Difference, in money, at \$65 88 each - - \$4,931 00

There were 9 births, 57 deaths, 24 desertions, and 14 accessions by the way.

2d Detachment.—Ross claims for 858; Page states them at 859, and Stephenson at 744; 54 died on the way, and 5 were born. Difference between Ross and Stephenson's muster-rolls 114 persons; in money, at \$65 88 each - 7,510 33

3d Detachment.—Ross's roll, 950; Page's, 846; and Stephenson's, 898; deaths 38, births 6, 171 accessions, and

148 desertions. Difference between Ross and Stephenson, in persons, 52; in money, at \$65 88 each	\$3,425 76
4th Detachment.—Ross's roll, 1,200; Page's, 1,079; Stephenson's, 1,132; deaths 33, births 3. Difference between Ross and Stephenson, in persons, 68; in money, at \$65 88	4,479 84
5th Detachment.—Ross claims for 1,250; Page enrolled 1,205, and Stephenson 1,033; deaths 71, births 5. Difference between Ross and Stephenson, in persons, 217; in money	14,295 96
6th Detachment.—Ross's roll, 983 persons; Page's, 841; and Stephenson's, 921; deaths 57, births 19, 6 accessions, and 10 desertions. Ross's, more than Stephenson's, 62 persons, and in money	4,084 56
7th Detachment.—Ross claims for 1,035 persons; Page reports 1,031; and Stephenson, 924; deaths 48, births 6. Difference between Ross and Stephenson 111; in money	7,312 68
8th Detachment.—Ross's roll amounts to 1,150 persons; Page's, 1,120; and Stephenson's, 970; making, between the first and last, a difference of 180 persons, and in money	11,858 40
No report of births, deaths, accessions, or desertions.	
9th Detachment.—Ross's roll amounts to 850 persons; Page's to 745; and Stephenson's to 717; deaths 34, births 3, joining the detachment after its enrolment, none. Difference between Ross and Stephenson 133, and in money	8,762 04
10th Detachment.—Ross charges for 1,118 persons; Page reports 1,031; and Stephenson, 1,039. No deaths, or births, or increase of the detachment, after enrolment, reported. Difference between Ross and Stephenson 79 persons; in money	5,204 52
11th Detachment.—Ross's roll, 1,029; Page's, 897; Stephenson's, 942; deaths 55, births 15. Difference between Ross and Stephenson, 87 persons; in money	5,731 56
12th Detachment.—Ross charges for 1,766 persons; Page reports 1,449; and Stephenson, 1,311. No births, deaths, or increase of the detachment, after enrolment, by persons joining it, reported. Difference between Ross and Stephenson, 455 persons; in money	29,975 40
Aggregate of difference, in persons, 1,633; in money	<u>107,571 94</u>
Add for wagons and horses in proportion, thus:	
1st Abstract.—75 persons, short of those charged for by Mr. Ross, according to Capt. Stephenson's return; the proportion of wagons over-charged for will be $3\frac{1}{2}$ wagons, equal, for the time charged for by Mr. Ross, (143 days,) to	\$3,753 75
Forage for horses, over-charged on same principle, 63 horses	1,072 50
	<u>\$4,826 25</u>
2d Abstract.—114 persons short; $5\frac{1}{2}$ wagons over-charged; time, 126 days; equal to	5,127 40
281 horses, do. for 93 days	1,060 20
	<u>6,187 60</u>

3d Abstract.—52 persons short; $2\frac{1}{2}$ wagons, 178			
days	-	-	\$3,239 60
13 horses, 135 days	-	-	702 00
			<u>\$3,94 160</u>
4th Abstract.—68 persons short; $3\frac{1}{2}$ wagons, 106			
days	-	-	2,893 80
17 horses, 103 days	-	-	700 40
			<u>3,594 20</u>
5th Abstract.—217 persons short; $10\frac{1}{2}$ wagons,			
110 days	-	-	8,354 50
54 $\frac{1}{4}$ horses, 106 days	-	-	2,300 20
			<u>10,654 70</u>
6th Abstract.—62 persons short; $3\frac{1}{10}$ wagons, 128			
days	-	-	2,777 60
15 $\frac{1}{2}$ horses, 127 days	-	-	787 40
			<u>3,565 00</u>
7th Abstract.—111 persons short; $5\frac{1}{2}$ wagons, 132			
days	-	-	5,128 20
27 $\frac{3}{4}$ horses, same time	-	-	1,425 90
			<u>6,554 10</u>
8th Abstract.—180 persons short; 9 wagons, 128			
days	-	-	8,064 00
45 horses, 127 days	-	-	2,286 09
			<u>10,350 09</u>
9th Abstract.—133 persons short; $6\frac{1}{2}$ wagons, 133			
days	-	-	6,191 15
33 $\frac{1}{4}$ horses, 130 days	-	-	1,729 00
			<u>7,920 15</u>
10th Abstract.—79 persons short; $3\frac{1}{2}$ wagons, 134			
days	-	-	3,569 10
19 $\frac{1}{2}$ horses, 131 days	-	-	1,034 90
			<u>4,604 00</u>
11th Abstract.—87 persons short; $4\frac{7}{10}$ wagons,			
144 days	-	-	4,384 80
21 $\frac{3}{4}$ horses, same time	-	-	1,252 80
			<u>5,637 60</u>
12th Abstract.—455 persons short; $22\frac{1}{2}$ wagons,			
141 days	-	-	22,454 25
113 $\frac{3}{4}$ horses, same time	-	-	6,415 50
			<u>28,869 75</u>
Aggregate of over-charge for wagon-hire and horse rations			<u><u>96,705 04</u></u>

Not one of these wagons ever returned. Without, therefore, advert-
ing to their quality and the difference between many of those used and those
in the mind of General Scott when he contracted, it is obvious that, as the
event for which the contract provided did not occur, the wagons being
(when not purchased) hired of the emigrant Cherokees themselves, there
must be a deduction of the return hire charged for, which, in the several
abstracts, amounts to :

1st,	-	-	\$10,080 00	3d,	-	-	\$13,440 00
2d,	-	-	12,040 00	4th,	-	-	16,800 00

5th, - - -	\$17,360 00	10th, - - -	\$15,680 00
6th, - - -	13,720 00	11th, - - -	- 14,280 00
7th, - - -	14,560 00	12th, - - -	- 24,640 00
8th, - - -	16,240 00		
9th, - - -	11,760 00	Ag. of return wag. allow.	180,600 00

Receipt to Captain Page of 13th November, 1838, at the rate of \$66,240 per 1,000, instead of \$65,880, being an excess of 36 cents on each individual, of whom there were 11,721 according to the receipt; so that, if no part of the present claim shall be allowed, there will have been an overpayment on the contract with General Scott of \$4,219,56, less by the price of three pounds of soap to 100 rations. It appears, further, that the conductors and other agents were in many instances employed, and the wagons hired long before they were wanted, which ought not, to the extent charged, to be allowed; but I have not the means of ascertaining what deductions should be made, with any approach to accuracy, as there are circumstances in all such cases (in this instance unknown to me) which ought to be taken into consideration; but as the hiring was chiefly from the emigrants themselves, they might have been engaged very shortly, if not immediately, before the setting out of the several parties. Whether the 250 horses estimated for actually went, there are no means of knowing; and, General Scott having thought, as every judicious man must, the number of horses was unnecessarily large, it is not to be taken for granted that so many accompanied each party, unless shown.

If the full evidence required of all our own agents was exhibited, other reasons for deductions from the claim presented might be observed; as it is unaccompanied by a solitary voucher which is not the work of the claimant, there appears to my mind good ground for saying that, in the three leading items, the claim should be reduced by \$384,876 98, being the overcharge in the number of persons, in the number of wagons and horses, and for the return of the wagons.

I have not noticed abstract No. 13, which is for a party of 231, as claimed by Mr. Ross, and as reported by Mr. John Drew, N. B. Daunenberg, and Captain Stephenson, west, 219, because this party went by water, and I have no means of ascertaining the actual expense of their removal; but, allowing whatever might be necessary to carry them to the point of embarkation, their transportation by water must have been comparatively cheap. It is known that a contract was made for Cherokee removal at \$10 per head; that upwards of 2,000 were removed at that rate, some parties in about eight days, from Tusculum, Alabama, to Little Rock. If to this be added their subsistence, and a liberal allowance of time and subsistence for their travel by land to the steamboat landing, and from Little Rock to their lands west, the amount ought not to reach, by a very large amount, the contract price of \$65,880, according to the "agreement" (as Mr. Ross calls it) with General Scott; but, instead of charging what this party cost, (without speaking of the length of time or want of any evidence at present,) the abstract is presented as if they moved by land, which under any circumstances would be wholly inadmissible. A party under Lieutenant Deas left Waterloo on 6th April, 1838, and were turned over to the agent west on the 1st May. No estimate was submitted for this party, as General Scott states in his letter of November 15th, nor was it within the contract, as he states in his letter of 26th October; and yet Mr. Ross uses the basis of land transportation in making out this abstract.

These statements are made to show that there is a wide difference, in Mr. Ross's view of this matter, from that taken by the Department, and refer to the accounts as if they were fully vouched and sustained by evidence; but there is not one solitary voucher of any kind, except the certificate of John Ross himself. If it was agreed that he could claim beyond the estimate, it must be on equitable grounds, and not because the contract with General Scott reaches the case, and must therefore be supported by disinterested evidence that the delay was unavoidable, that the wagons and horses were used, the rations claimed for actually issued, and the various other expenses fairly incurred and necessary. As far as the \$65,880 go, no settlement with the Government is required; all beyond, in the most favorable aspect, is like any other claim to be properly sustained: in the words of General Scott, in his letter of 14th November, in speaking of L. Ross's requisition to Captain Page, "you will therefore see that the abstracts are fully supported by the *returns for provisions*, soap, and forage, that similar issues are not made for the same time, or a part thereof, to the same persons, horses, ponies, and mules, and that the prices charged for the several articles, which you shall find have been properly issued, are not too high." Here we have nothing. It seems to me that Mr. Ross has no authority or power to present such a claim, or, if it could be allowed, to receive it. He was authorized with several other Cherokees to enter into an agreement with General Scott for the removal of the Cherokee nation. He and they enter into it, but I know of no authority in John Ross alone to make any settlement growing out of it; nor am I sure that the power given to them jointly is not at end, for it seems to have been conferred for a special purpose, which was answered long since.

By reference to the letter of the Secretary of War, of 23d May, 1838, it will be perceived at once that he meant to authorize General Scott to make a definite arrangement with the Cherokee people, that should provide a precise fund for the emigration by their own agents. The power was given "to enter into an agreement with the agents of the nation for the removal of their people. The expenses attending the emigration of the Cherokees are now fully ascertained by past experience, and it is presumed you will find no difficulty in making such an arrangement as, while it will secure their comfortable removal in the manner most agreeable to their chiefs and head men, will effectually protect the interests of the United States, and prevent all unnecessary delay or useless expenditures." This seems to be very explicit, but not more so than the agreement itself. The first letter from the Cherokee delegation proposes to undertake "*the whole business of removing their people* to the west of the river Mississippi." The communications on either side, prior to the presentation of the estimate, show that the agreement embraced "the entire removal and subsistence of the Cherokees." The letter communicating the estimate spoke of the necessity of immediate arrangements, that preparations might be at once entered upon, and depots of subsistence established on the whole route, adding, "your approval of the estimate being known, and a basis established to regulate expenditures, the immediate amount required will be specified." The general replied on 1st August, "in your note of yesterday you estimate that \$65,880 will be the necessary cost of every thousand Cherokees emigrated by land from this to their new country." He calls the estimate an extravagant one, and gives reasons, in reference to the wagons and horses, for thinking so; presumes that the wagons,

from the high estimate for their hire, must be each drawn by five or six horses, and requests a reconsideration of the several items of the estimate. This was had, and, on the next day, the delegation again presented the estimate without alteration, except by a small addition for soap, and it was finally agreed to.

This correspondence makes a plain contract, in my opinion, for the entire removal at an expense which is, to say the least of it, very liberal. No one then thought of an extra charge ; it was not once hinted that eighty days were too few for the journey, or that, if a greater length of time was occupied by it, more than the estimate would be claimed to cover increased expenses. This idea seems to have arisen in November afterwards. The distance to be travelled is stated in the estimate at 800 miles ; the daily journey was of course computed at 10 miles. It is certainly a very short distance to move in a day, with the wagon and horse facilities provided for the feeble and the young. It would seem that the journey might have been performed according to the contract, and so thought all parties when it was made ; and if for their own convenience they chose to prolong it, or to expend more money upon it than they contracted for, the excess ought not to fall upon those who did not partake of the indulgence.

The distance, upon an examination of the journal transmitted by Lieutenant Deas, of the army of the United States, who was disbursing agent of the treaty party conducted by John A. Bell, appears to be, by the route they took, but 707 miles, which they performed in 89 days, from 11th October to 7th January, 1839, both inclusive. They travelled very leisurely, making for one day only 18 miles ; for three days only 15 miles each ; for five, respectively, 13 miles ; for one 14 ; for fifteen days, severally, 12 miles ; and for the residue of the travel, various distances, running from 4 to 11 miles. They were six days stationary, and spent eleven days in crossing the several rivers in their way. From this statement it is obvious that the time stipulated for was abundantly long, without any inconvenient haste, and that the distance by the route selected by one party is less by near 100 miles than the computation in the estimate of Mr. Ross and his associates. How, then, Mr. Ross can, with propriety, charge 143 days agents' pay, wagon hire, forage, subsistence, &c., for the time employed in making the journey, from 28th August to 17th January, 1839, according to the first abstract ; 126 days' wagon hire and agents' pay, and 93 days' forage for the wagon and riding horses, and for travel, according to the second abstract ; 178 days' wagon hire and agents' pay, and 135 days' forage and travel, between 16th October and 27th February, 1839, according to the third abstract ; 106 days' wagon hire and agents' pay, and 103 days' forage and travel, from 1st October to 11th January, 1839, according to the fourth abstract ; 149 days' compensation to agents, 110 days' wagon hire, 106 days' forage, and 107 days' travel, from 19th October to 2d February, 1839, according to the 5th abstract ; 153 days' pay to agents, 128 days' wagon hire, and 127 days' forage, subsistence, and travel, from 20th October to 23d February, 1839, according to sixth abstract ; 164 days' pay to agents, 132 days' wagon hire, and forage, subsistence, and travel for 131 days, from 23d October to 2d March, 1839, according to the seventh abstract ; 162 days' compensation to agents, 128 days' wagon hire, 127 days' forage, and 126 days' subsistence and travel, from 27th October to 1st March, 1839, according to the eighth abstract ; 177 days' compensation to agents, 133 days' wagon hire, 130 days' forage, 126 days' subsistence and travel,

from 31st October to 5th March, 1839, according to the ninth abstract; 189 days' pay to agents, 134 days' hire of wagons, and 131 days' forage, subsistence, and travel, from 4th November to 14th March, 1839, according to the tenth abstract; 186 days' compensation to agents, 144 days' wagon hire and forage, and 139 days' subsistence and travel, from 6th November to 24th March, 1839, according to the eleventh abstract; or 154 days' pay to agents, 141 days' wagon hire and forage, and 139 days' subsistence and travel, from 7th November to 25th March, 1839, according to the twelfth abstract, I am wholly at a loss to see, apart from the provisions of the contract with General Scott. The several journeys were performed about the same time, and some of them covering the identical period of the Bell emigration, under the direction of Lieutenant Deas. The same facilities existed for all—the same difficulties were to be encountered by each.

The amount of expense, according to the account now presented, is equally objectionable. Instead of \$65 88, for which Mr. Ross and the other members of the delegation agreed to remove each Cherokee, he asks to be allowed a fraction over \$103 25, while the treaty party, already referred to, were removed under their own agent, John A. Bell, with Lieutenant Deas as disbursing agent, at the same time, under the same circumstances, with the same improved rations, (under General Scott's orders to Lieutenant Deas, see journal of the latter,) and the same wagon and horse facilities, at a fraction less than \$61 70. Why this great disparity of expenditure? It is in proof that a considerable number of the wagons used by the delegation were drawn by oxen, but the abstracts are all made out for forage, as if horses were exclusively used, and, although I am not aware what was the difference in subsisting them, I am of opinion that it would be considerable; and as the ox teams could not travel so fast as those drawn by horses, it is probable that the great protraction of the time beyond eighty days was owing, in some measure, to their employment, which General Scott could not have reckoned on, for, in his letter of 1st August, 1838, he presumes, from the amount of the estimate, that large wagons, "each drawn by five or six horses," were those intended to be used, in which, if he was mistaken, he was not corrected. The treaty party, as stated by General Scott in his letter of 28th August, 1838, to the Secretary of War, offered to remove themselves if the Ross delegation would advance them \$40 a head instead of the \$65 88 contracted for, which the latter refused to do. Alfred Iverson, Esq., certifies that J. C. Watson & Co., of which firm he was a member, proposed, in the spring of 1838, to remove the Cherokees at \$32 per head, travel not to exceed twelve miles per day; and the estimate for Cherokee emigrations, on which the law of 12th June, 1838, was based, appropriating \$1,047,067 for the Cherokees, was \$30 per head. (See letter of the Secretary of War to General Scott, of 20th August, 1838.)

In every view which I have taken, or am able take, of this claim, it appears to me it ought not to be allowed.

Respectfully submitted, &c.

T. HARTLEY CRAWFORD.

Hon. J. R. POINSETT,
Secretary of War.

Approved :

J. R. P.

WASHINGTON, *September 2, 1840.*

I have carefully considered the memorial, presented to me by the Cherokee delegation on the 17th ultimo, appealing from the decision of the War Department in relation to certain claims set up by John Ross and others for further sums, which they allege to be due them on account of the removal of the Cherokee people to their new homes in the West.

This appeal, it is stated, proceeds from "a conviction of the injustice which has characterized the whole proceedings of the War Department towards the delegation, since its arrival in Washington in December last." Having sanctioned the decision of the Secretary of War, not to hold any intercourse with John Ross, for reasons which appeared to me just and expedient, I cannot find, on a review of the case, that any injustice has been done to the delegation by his exclusion, as the War Department expressed, at the same time, its readiness to confer with the other members of the delegation on all subjects relating to their mission. The complaint, therefore, is unfounded, that "while information has been constantly received from those either at enmity with us, or from officers of the United States, whose previous course was not that of friends, we have been denied the privilege of conference or representation, in the exclusion of our two principal delegates from the chambers of the Secretary of War; and hence have been prevented from giving those explanations, and establishing facts which would have relieved us from the imputations so harshly cast upon us." The War Department, I understand, signified its readiness to confer with the delegation of the Cherokee nation whenever they desired to see the Secretary, excluding only John Ross, for good and sufficient reasons.

With regard to the other subjects embraced in the appeal, it appears that the march of the detachments westward was postponed, and three of them detained, for various periods, by the orders, or at least with the consent, of General Scott. The contract made by that officer with John Ross and others, for the removal of the Cherokees, does not appear to me to embrace the periods the detachments were thus detained. It related exclusively to the emigration; and the subsistence of the Indians, before they took up the line of march, it is presumed, is fairly a subject for a separate charge. It appears to me proper, therefore, that this item of the claim should be re-examined; and I recommend that reference be made to General Scott, to ascertain whether the delay, during the periods for which a claim is preferred for subsisting these detachments, was occasioned by his order, and all the circumstances under which it took place, to enable the Department to decide whether the amounts of \$92,781 50 and \$1,625 18½, or any part thereof, are founded in equity, and, if so, that the charges may be adjusted in the usual manner, and, if supported by proper vouchers, as all accounts of a similar character are required to be, the amount so found due be paid to the claimants.

My opinion is different in relation to the remainder of the claim, amounting to \$486,939 50. I consider the agreement entered into by General Scott with the agents of the Cherokee nation, for the emigration of their own people, to have been a contract for a specific sum. The Secretary of War so intended it to be when he sanctioned it, and it appears to have been so understood at the time by the parties themselves, as the correspondence sufficiently shows. In order to ascertain what would be a fair compensation for the expense to be incurred, the Cherokee contractors submitted to General Scott, on the 31st of July, 1838, an estimate of the probable cost;

and, in order to convince him of the reasonableness of the sum demanded, they stated that so much time will be consumed on the journey, so many wagons, horses, and attendants, will be required for the transportation, and so many rations for the support of the Indians: all which will cost so much. General Scott, although he considered the estimate on which the demand was founded unreasonable and exorbitant, agreed to give the specific sum, for the removal of each, which was asked. The precise number of wagons, horses, attendants, and physicians, which formed the basis of the estimate, formed no part of the contract. The Cherokee contractors bound themselves to remove their people at the high rate of \$65 88, each person, to their lands west of the Mississippi. This amount has been paid them, and there is no equitable claim for more.

M. VAN BUREN.

WASHINGTON, *January 7, 1841.*

SIR: The undersigned, designated by the chiefs of the Cherokee delegation as their counsel, had the honor to receive from the President, under date of 2d September last, through the War Department, his determination on the memorial of said chiefs, presented to the President, appealing from a decision of the Commissioner of Indian Affairs and the Secretary of War.

In the review taken by the President of that decision, he was pleased to order and direct, that if the claims of \$92,781 50 and \$1,625 18 $\frac{1}{2}$, or any part thereof, are founded in equity, that the charges may be adjusted, &c.; and that reference be made to General Winfield Scott, to whom had been intrusted the whole subject of Cherokee removal.

On the information then before the President, relying on the report of the Commissioner of Indian Affairs, as affirmed by the Secretary of War, the President was pleased to determine that the sum of \$486,939 50, claimed by the delegation as due for cost of emigration, in addition to the sums already paid by order of General Scott, was inadmissible, and did not form a proper charge to be preferred to the Indian department for settlement and payment.

The delegation received this part of the award with sorrow and bitterness of spirit.

They were sorry that the determination prevented them from paying many sufferers at home, who had loaned their means to the purposes of emigration; and they deplored the position taken by the War Department, that they, or any of them, could be considered capable of misusing the privilege of self-emigration.

Under these feelings of the delegation, the undersigned applied for and obtained permission, from the Commissioner of Indian Affairs, to refer to General Scott for his exposition of the claim presented by the delegation, thus rejected by the President, under the avowed intention, on the part of the undersigned, to represent the subject to the President; and conceding the position that, so far as the said Department was concerned, the decision of the President was conclusive.

It was also deemed proper to make a few inquiries relating to the items ordered to be re-examined.

In pursuance of said permission, the undersigned addressed the letter and propounded the several questions to General Winfield Scott, which, with his answers thereto, accompany this appeal.

Referring the President to the memorial heretofore presented, and the accompanying papers, herewith handed, the undersigned relies with confidence on the directions of the President, that the said claim of \$486,939 50 shall also be audited and settled.

All which is most respectfully represented.

MW. ST. CLAIR CLARKE,

Attorney and Counsel for John Ross and others, &c.

His Excellency MARTIN VAN BUREN,

President of the United States.

[Copy of endorsement.]

The President regards his decision, in relation to the claim of John Ross and other Cherokees, for the payment to them of \$486,939 50, out of the moneys due the whole nation, as final, and refuses to reopen the case. The other case will be examined and adjusted, and the testimony given by General Scott, in that particular, will have its due weight.

J. R. P.

TREASURY DEPARTMENT,

Second Auditor's Office, July 28, 1842.

SIR: Herewith enclosed is a copy of a decision of the Secretary of War, accompanying the claim of John Ross, in behalf of the Cherokee nation, made in conformity with the request in the letter of the Hon. James Cooper, chairman of the Committee on Indian Affairs, under date of the 21st instant, referred from the War Department to this office; a copy, also, of sundry documents referred to in that decision, viz: interrogatories of M. St. Clair Clarke, Esq., to General Scott, the answers, and the general's "notes."

Respectfully, your obedient servant,

W. B. LEWIS.

Hon. JOHN C. SPENCER, *Secretary of War.*

Copy of the decision of the Secretary of War upon the claim of the Cherokee nation for expenses incurred in their removal.

A claim was preferred by the representatives of the Cherokee people, to whom had been intrusted the direction of their removal to the West, under an arrangement with Major General Winfield Scott, in the summer of 1838, to the last administration; and the branch of it now under consideration was *disallowed* successively by the Commissioner of Indian Affairs, the Secretary of War, and the President of the United States. A revision of that decision is now asked, the claim having been fortified by additional evidence and documents since it was originally presented.

The sum now demanded amounts to \$486,939 50 $\frac{1}{2}$. It is alleged to be payable, out of the balance of the Cherokee fund created by the treaty of 1835 and the law of 1838, to the representative or agent of the Cherokee people, in trust for such of them as have rendered services or furnished

means of transportation or subsistence to those who removed, under the direction of their chief, John Ross, in 1838 and 1839. The construction which has heretofore prevailed limited the time (for the purpose of settling the compensation) within which the emigration was to be performed to 80 days, and the sum to be paid to \$65 88 for each individual removed. This, it was conceived, was deducible from the correspondence between General W. Scott and the Cherokee delegation in 1838, whose arrangements, by letter, were considered to be a contract for a specific sum, at which Mr. Ross and his associates were bound to remove their brethren to the Western territory. The claimants, on the other hand, contend that the estimate, which was finally acceded to by General Scott in August, 1838, was nothing more than an exhibit of the daily cost of transporting and subsisting each individual, which was regarded as *fixed*; but that the time assumed in the estimate was not binding on either party, but was to be subsequently ascertained by actual experiments, and the measure of compensation to be settled in the particular of time by the fact, as it should turn out, whether the number of days consumed in the emigration should be more or fewer than 80.

This question is one not entirely free from difficulty even now; and certainly, until the deposition and "notes" of General Scott were adduced, the former in January and the latter in June last, and the resolution of the Cherokee council of November 11, 1840, was adopted, the subject was not less embarrassed.

It may be necessary to refer to the different items of the estimate objected to by General Scott as extravagant, and afterwards, on 2d August, 1838, acceded to by him. It is the basis of the present claim. It follows:

Estimate for the emigration of a party of one thousand Cherokees to to their country west of the Mississippi, distance 800 miles, 80 days going.

Fifty wagons and teams, (20 persons to each wagon,) at a daily expense of \$3 50, including forage -	-	-	\$28,000 00
Returning, \$7 each for every 20 miles -	-	-	14,000 00
Two hundred and fifty extra horses, 40 cents each per day -	-	-	8,000 00
Ferriages, &c. -	-	-	1,000 00
Eighty thousand rations, at 16 cents each -	-	-	12,800 00
Conductor, \$5 per day -	-	-	400 00
Assistant conductor, \$3 per day -	-	-	240 00
Physician, \$5 per day -	-	-	400 00
Physician returning, \$15 for every hundred miles -	-	-	120 00
Commissary, \$2 50 per day -	-	-	200 00
Assistant commissary, \$2 per day -	-	-	160 00
Wagon master, \$2 50 per day -	-	-	200 00
Assistant wagon master, \$2 per day -	-	-	160 00
Interpreter, \$2 50 per day -	-	-	200 00
			<hr/>
			\$65,880 00

For the 80 days on this footing (adding, for soap, 45 cents to every one hundred rations) payment has been made in full. The excess over, or difference between the 80 and the number of days actually employed in the removal from East to West, calculated after the same rate of remuneration, is the present demand.

I think the ground on which the claim rests is materially varied by the recent statement of General Scott. Since the first decision was made, General Scott, in his answers to Mr. Clarke's interrogatories, states: "The march of the several Indian detachments was averaged (by estimate) at 80 days; and, on that estimate, money was advanced to Mr. John Ross. If that estimate was found too great, Mr. Ross was to refund to the nation; and if too small, including the unavoidable delays mentioned above, it was understood and agreed that the subsistence, &c., for the excess of time on the road, was to be paid for by the Government out of the funds of the Cherokees." And again: "The time of the actual removal (the commencement) on this side of the Mississippi of each detachment was to be marked by Captain Page, and the arrival of the detachment on the other side of the Mississippi by Government agents there. Of course, the final settlement of the expenses of the removal was left for its termination." In the "notes" submitted by General Scott in June last, he is perhaps stronger to the same effect: "The understanding of the parties was common and distinct, that the 80 days allowed for the removal of each detachment, by *land*, was a mere assumption of a basis on which to calculate for the moment the advances to be made by the United States on account of the movement, and to set it agoing. If the advances proved to be too great, the excess was to be paid into the treasury of the nation; if too little, on account of more time in the movement, the United States were to make up the difference from the trust fund." In addition: "The Cherokee nation, through their national committee and council, in national council assembled," ordered, "That the aforesaid John Ross be, and he is hereby, directed and fully empowered to proceed to Washington city, and to urge a settlement of this claim with all possible expedition, and to apply for and receive from the Government of the United States, in the name of the Cherokee nation, the balance due of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and one-half cents, as stated in his account of the emigration claim, in order that the business growing out of it may be brought to a final close."

It is to be remarked, that the estimate submitted to General Scott was, in addition to his objections before the arrangement was closed, on 2d August, 1838, afterwards transmitted, on 22d August, to the Cherokee delegation, with memorials, by Cherokees, &c., complaining, by way of protest, of the extravagance of the sum agreed to be paid to Mr. Ross and his associates; which they answered on the 25th of same month, and, on the same day, received a reply, stating General Scott's opinion "that the savings which may be effected out of the general estimate agreed upon between us, for the subsistence of persons and horses, *ought to have been reserved* (over and above a reasonable compensation to the furnisher for his labor and risk from agents) for the benefit of all Cherokees interested, instead of allowing those savings, if any, to go into his pockets." He acknowledges, however, "the impossibility of arriving at any satisfactory result as to those savings or their amount; and, being unwilling," he continues, "to delay the emigration now nearly ready to commence under your immediate direction, I withdraw, on the part of the United States, the objections intimated in my letter of the 22d instant to the contract in question." This would seem, with the general's testimony as to the understanding of the contract, and what it was intended to be, to make the measure of daily

compensation certain, as well as the principle upon which the ultimate settlement must be based.

The matter of return wagon hire, which is very large, (amounting to no less than \$180,000 in the aggregate,) is not clear. General Scott, in his statement of June last, concurs in opinion with the Commissioner of Indian Affairs in thinking this part of the claim ought to be disallowed if those wagons and teams did not return. It is not alleged that they returned, but it is said that it was determined that no white man should furnish wagons and teams; that some of them were provided by such Cherokees as had them, and the others bought; that this was done with the knowledge of General Scott, as his correspondence shows; that, from the fact of their being carried to a wilderness, sales of those wagons and teams were often out of the question, when there was a total loss of them; that as to all there was a great sacrifice in price; and that, in anticipation of this inevitable result, the return wagon hire item was looked to as the source of remuneration. This must have happened to a greater or less extent, and presents in itself a strong claim upon equitable grounds. I imagine it to be correct that, if the Cherokee delegation had been content to receive \$65,880 for every 1,000 persons, there would have been no complaint; and in this aggregate there is included the return wagon hire, although I cannot suppose there is any thing in the term itself, as has been contended. The strongest argument that can be urged in its favor, and the one that chiefly influences my mind, is the resolution of the Cherokee council of November 11, 1840. It has been their pleasure, in the most solemn form in which their legislative power can be exercised, to say what disposition shall be made of this their own money; and I know of no objection to the allowance of what they have thus sanctioned. The only plausible difficulty that could be suggested is, that the Cherokees were much distracted and divided, and that a portion of the tribe might not cordially acquiesce in the order or decree of the council. Even if this be so, it exists more or less in every community. We are obliged to consider the acts of their constitutional authorities as binding on all. Besides, the act of union, of June 26, 1840, has been recognised by the Government of the United States as healing their dissensions, and obligatory on all. On the 11th of November, 1840, (by a remarkable coincidence the same day that the Cherokee council empowered John Ross to settle and receive the amount of the claim under consideration,) my predecessor, thinking "sufficient time had elapsed to test the sincerity of the parties to the agreement of the 26th June last," directed the payment of the national Cherokee funds, annuities, &c., to those entitled by the treaty to receive them, for the benefit of the tribe. The national funds due, amounting to upwards of \$100,000, have, in consequence, been paid to the officers of the Cherokee tribe, by virtue of a resolution of the same council, (being only three days later,) at the same session, when the authority was conferred on Mr. Ross which relates to this claim. Of the full establishment of the Cherokee union, of the uninterrupted exercise of authority over the whole tribe by those whom it either placed in office or recognised as being in power—of, in short, the rightful and legal authority to direct all the officers of the nation, and control its interests, public and private, in those who then administered its government, and I believe still do, there can be no doubt.

Taking, then, the letter of General Scott of August 25, 1838, and the formal withdrawal of all objections, on the part of the United States, to

any of the items of the estimate which had been previously submitted and agreed to by him; understanding the true intent of the contract or arrangement between General Scott and the Cherokee delegates, from the general's answers to the claimant's interrogatories, and from his "notes," to be payment for the number of days properly employed in the emigration, after the rate agreed upon for the 80; believing, from various affidavits on file, that there was no wanton or unnecessary delay, and requested by "the Cherokee nation, through the national committee and council in national council assembled," to settle with and pay to John Ross, in the name of the Cherokee nation, the balance due, of \$581,346 88½, as stated in his account of the emigration claim, I am constrained to allow the balance of this claim *now* unsettled, viz: \$486,939 50½, subject, however, to the following conditions and restrictions:

1. It appears that there has been a small overpayment to Mr. Ross, in his receipts from Captain Page, which were intended to cover the expenses of the 80 days, at \$65 88 per individual, of 36 cents on each person; as it is stated, making an aggregate of excess of \$4,219 56, less by the price of three pounds of soap (45 cents) to every 100 rations. This matter should be carefully examined by the accounting officers, and whatever may have been paid heretofore, over and above the \$65,880 per 1,000 for 80 days, (adding thereto 45 cents for every 100 rations,) should be deducted from the amount now allowed.

2. There is a discrepancy in the number of persons reported by Captain Stephenson and those reported by Mr. Ross. The reports of Captain Stephenson are the lowest, and they give the number of Cherokees who arrived west, and who consequently completed their emigration: for both reasons, his returns should be taken for the present as the guide, and the difference be satisfactorily explained at a future day.*

3. Abstract No. 13 is for a party (of 231 as claimed by Mr. Ross, and one of 219 as reported by Mr. John Drew, N. B. Daunenburg, and Capt. Stephenson) which went by water. The transportation and other means of their removal are charged for as if they were conveyed by land. This cannot be sanctioned. An account must be rendered showing the *expenses actually incurred*, which will be adjusted as may seem to be right when it is presented. In the mean time, this abstract is to stand over. This determination conforms to General Scott's view of the matter, for he speaks emphatically of the arrangement between himself and the Cherokee delegates as confined to emigration *by land*.

The original of Mr. Clarke's interrogatories and of General Scott's answers should be filed in the Department, as well as the original order of the national Cherokee council. Of these papers, severally, we have only copies—of the latter paper a certified copy.

* On an examination of the accounts of Messrs. Glasgow & Harrison, filed in the Second Auditor's office, it appears that the number of Cherokees subsisted by them amounted to 12,769—making a difference, it will be perceived, of 380 *less* than the number stated by Mr. Ross, and 1,265 more than Captain Stephenson's returns exhibit. The explanation required will therefore be confined to the discrepancy which exists between the number subsisted by Glasgow & Harrison and that stated by Mr. Ross, viz: 380; and upon this point the accounting officers will have due regard to the irregular manner in which the agents of the Government did their business, and they will also give due weight to the presumption of fairness on the part of the agent or representative of the Cherokees in stating the numbers emigrated, when the whole number emigrated was so large, and the difference between his and the Government officers so small, taking into account the number subsisted by Glasgow & Harrison, upon the authority of Captain Stephenson.

Since the foregoing directions were given, I have examined some additional evidence, not brought particularly to my notice before, and am satisfied to leave it to the accounting officers to decide whether the proofs do not show that the party emigrated by water did not cost as much, in fact, as those emigrated by land, and to allow the claim upon that ground, if they shall so find the proof, or so much as they shall find the costs to have been upon the proof now presented, deducting the six days' detention at the mouth of the Ohio, detailed in Lea's deposition.

J. B.

SEPTEMBER 6, 1841.

SEPTEMBER, 17, 1841.

DEAR SIR: It appears to me that the six days' detention at the mouth of the Ohio of the water party of the Cherokees, which I directed to be deducted from the account, ought, like the other disputed items, to be submitted to the accounting officers, for their decision. Mr. Ross has shown me a statement upon this subject, which varies the case, since I signed the directions in the matter.

Respectfully, &c.

JOHN BELL.

A. M. LEA, Esq.,
Acting Secretary of War.

[Endorsement.]

The President directs that the claim of John Ross and others, on the part of the Cherokee nation, alluded to within, shall be settled by the accounting officers, without deducting for the time the steamboat Victoria was detained at the mouth of the Ohio, as he deems that detention altogether excusable and proper, under the circumstances.

ALBERT M. LEA,
Acting Secretary of War.

SEPTEMBER 17, 1841.

Copy of interrogatories of M. St. Clair Clarke to General Winfield Scott, and of General Scott's notes and of his answers to the interrogatories referred to in the decision of the Hon. John Bell, late Secretary of War, on the 6th September, 1841, relative to the claim of John Ross, principal chief, &c., in behalf of the Cherokee nation.

WASHINGTON, November 3, 1840.

SIR: By the kindness of the War Department, I have been permitted to correspond with you on the subject of the Cherokee removal. This authority you will find recognised by the *frank* of the Commissioner of Indian Affairs on the packet herewith transmitted.

As counsel of the Cherokee delegation, I am well aware that a previous correspondence has been held with you, under the decision of the President of the United States, directing that certain items of claims for expenditure of removal to the west of the Mississippi river should be referred to you, for your exposition.

The items of claim, as presented during the last spring, and which were

rejected by the War Department as inadmissible, were composed of a charge for \$92,781 50, of \$1,625 18½ for expenses incurred while the emigrants were stationary, and also for the balance due under the arrangement made with you for cost of emigration of the respective detachments, over and above the several sums paid by you on the requisitions of John Ross, who, as "principal chief and superintending agent of the Cherokee nation for emigration," was recognised by you as the sole monetary agent between the United States and the Cherokee nation.

You will find by the account presented by Mr. Ross, as contained in the report of the Commissioner of Indian Affairs, that the expense incurred for the removal of the twelve land detachments, and the thirteenth being by water, was \$1,263,338 48½; and that having received from you, in divers sums, the amount of \$776,398 98, there is still due to the agents of removal \$486,939 50.

On presentation of the memorial of the Cherokee delegation, herewith transmitted, (in copy,) it pleased the President, as you will see by his decision, also transmitted in full, to order a revision in *part* of said decision by the Secretary, and to confirm his judgment on the most important item of claim.

My interpretation of your correspondence with the Cherokees has brought me to an entirely opposite conclusion; and I cannot stop short, as their counsel, of hearing from you a confirmation or rejection of the position which I have assumed, as you will see by the correspondence herewith transmitted, based on the arrangement made by you with the Cherokees.

With regard to the two items ordered to be revised, I desire to propound for your answers the following questions:

1st. Was there any thing which induced you to think that John Ross, acting for the committee, had favored Lewis Ross in the supplies for the congregated emigrants, except the circumstance that the subsistence under Lewis Ross was forthwith changed from the United States subsisting officers to said Lewis Ross?

2d. If they had not been passed over from the subsisting list of the United States, would not their subsistence have formed a regular and unquestioned charge from the day of their congregation, or report as congregated for subsistence by the United States; and would not the certificate of the officers of the United States have been received in testimony complete of the number of individuals subsisted, and rations and forage issued?

3d. Were you or not informed that the reason why the emigrants joined the subsistence list of Lewis Ross, as soon as they possibly could, was that the *ration* furnished by said Lewis Ross was far preferable to their subsistence under the United States regulations?

4th. Did or did you not consider the whole of the emigrants stopped by your suggestion (or command, as the Cherokees construed it) subject to be subsisted for the term of suspension, without reference to the agreement for the eighty days' subsistence and expenses?

5th. Was it not your intention and will, acting as the United States, that the aforesaid subsistence should be paid for?

6th. If you had had the time for investigation of the items of said accounts of \$92,781 50 and \$1,625 88½, and been satisfied that rations, forage, &c., had been issued and paid, would you or not have issued or sanctioned a requisition to cover the amount?

7th. Not understanding perfectly your orders to Captain Page, will you please to indicate what *vouchers* you would have required to show that there had been no charges made by Lewis Ross, for the subsistence, forage, &c., while the United States were also subsisting?

8th. Did you or not, at any time, understand, from John Ross and others, that there was to be a settlement by the emigrating committee and the nation, and that the actual cost of emigration was to be the cost charged to the nation?

Please excuse the form of the above interrogatories, as my commissaryship has never extended beyond that of my "*aris et fociis*."

As to the last item, on which, with great deference to the Secretary of War, I think he has led the President to an erroneous conclusion, and that the Commissioner of Indian Affairs has misapprehended the true intention and agreement of the parties, I desire to ask you if I have or have not, as shown in my correspondence, come to the correct conclusion, to wit: that the \$65 88 per capita was not the specific sum to be paid, cost what it might, less or more; but that this sum was exhibited to you by the Cherokees, and so understood by you, as the data by which the eventual cost was to be settled, whether the several detachments took more or less than eighty days. In other words, that if the detachment reached its destination in seventy days instead of eighty, would not a deduction of ten days, for the wagons, forage, rations, &c., have been made; and if the detachment or detachments consumed ninety days or more, diligently pursuing their journey, that the per diem estimates, forage, rations, &c., would be a fair item of charge.

Referring you to part of my correspondence with the Commissioner of Indian Affairs, I decline any argument of the point, and rely on your answer, be it what it may, for the present.

Some difference exists as to the number of emigrated Cherokees. I would be glad to have your opinion as to how this difference could best be reconciled.

If the final settlement of the emigration had been made with General Scott, what voucher would have been required by him of Mr. Ross of the excessive time consumed?

A full answer to *each and every* question as your time will permit will be duly appreciated by your friend and servant,

M. ST. CLAIR CLARKE,

Attorney and Counsel for the Cherokee Nation.

General WINFIELD SCOTT.

NOTE.—On the foregoing letter, Mr. Clarke, at the request and in the presence of Mr. Crawford, Commissioner, &c., made the following endorsement:

On informing the Commissioner of Indian Affairs of the substance of the within communication, he alleged that he regarded the decision of the President of the United States as conclusive on the part of the memorial relating to the item growing out of the agreement of \$65 88, so far as the War Department was concerned; and that, so far as the permission of correspondence is to be relied on, it is confined by said Department to the other items. Mr. Clarke intends your correspondence for the President himself, hoping, if your answers are in his favor, that the President will revise his decision.

Very respectfully,

M. S. C.

Mr. Clarke will find my answers annexed to his several interrogatories.
WINFIELD SCOTT.

The undersigned, referring to his letter to T. H. Crawford, Esq., Commissioner, &c., dated September 19th, 1840, annexes to the interrogatories of M. St. Clair Clarke, Esq., attorney, &c., the following answers :

Answer to the opposite or first interrogatory.—In candor I must say there was not.

WINFIELD SCOTT.

Answer to the second interrogatory.—Yes; but I must add, that on the occasion alluded to I was not the superintendent of Cherokee emigration, and had nothing to do with issues of any kind to the Indians, or with accounts. Those duties appertained to Captain Page, of the army, designated for these purposes by the War Department.

WINFIELD SCOTT.

Answer to the third interrogatory.—I was informed by Mr. John Ross, on presenting, for my approval, the account mentioned above by Mr. Clarke, for \$92,781 50, about November 14, 1838, the ration issued by Mr. Lewis Ross was better by sugar and coffee, or tea. I thought the account high, and instructed Captain Page to scan it by the principles given in a letter to him, dated November 14, 1838—the subject having been from the first within his particular province, and I at the moment being about to set out for the Canada frontier.

WINFIELD SCOTT.

Answer to the fourth interrogatory.—I considered each detachment of Indians as turned over to be subsisted by Mr. Lewis Ross, under his contract, from the time that the detachment took the road ; and, of course, including the time of any unavoidable delay on the road, caused by drought. I know that several of the detachments were so delayed with my approbation, it being in fact impossible to find on the road sufficient water.

The march of the several Indian detachments was averaged (by estimate) at eighty days, and on that estimate money was advanced to Mr. John Ross. If that estimate was found too great, Mr. Ross was to refund to the nation; and if too small, including the unavoidable delays mentioned above, it was understood and agreed that the subsistence, &c., for the excess of time on the road, was to be paid for by Government, out of the fund of the Cherokees. It will be remembered that the movement was a self-emigration, placed, by desire of the Government and the Cherokees, in the hands of the chiefs of the latter.

The time of the actual movement (the commencement) on this side of the Mississippi, of each detachment, was to be marked by Captain Page, and the arrival of the detachment on the other side of the Mississippi by Government agents there. Of course, the final settlement of the expenses of the removal was left for its termination.

It is known, by personal observation, that after there was sufficient water on the road the several detachments were dilatory on the march all the way to the Ohio river ; and it would seem that they moved slowly up to the end of the route. But it is not known that the slowness of the movement can be attributed in any degree to either Mr. Lewis Ross, the contractor, or his brother, the agent of the nation. Both were specially selected

for these respective stations by the Cherokees themselves, and each detachment was placed under a chief, assisted by many head men.

WINFIELD SCOTT.

Fifth and sixth interrogatories.—These are answered in what I have already said above.

WINFIELD SCOTT.

Answer to interrogatory seven.—Not being the disbursing agent, I meant only the *proper vouchers*, such as were required by the circumstances, and would have been received by the Indian bureau of the War Department.

WINFIELD SCOTT.

Answer to the eighth interrogatory.—I did.

WINFIELD SCOTT.

Notes on the claim of \$581,346 88½, made upon the United States, as trustees of the Cherokee Indians, by John Ross and others, in behalf of Lewis Ross.

PRELIMINARY REMARKS.

The Cherokees remaining in North Carolina, Georgia, Tennessee, and Alabama, May 26, 1838, were, beginning that day, already by the middle of the next month, very generally collected for emigration west, by the troops of the United States under my command.

The collected Indians were held guarded in four healthful and convenient camps (three in Tennessee and one in Alabama) until they could be sent off by N. Smith, superintendent of Cherokee emigration.

I had nothing to do with this movement, other than to collect and turn over the Indians to the superintendent for subsistence and emigration.

Up to about the 19th of June, the superintendent had been able, from the want of sufficient steam and other boats, to send off, by water, only two detachments of the Indians collected by me, (I think,) and he had totally failed to engage wagons and to establish depots of subsistence for the land routes, although I gave him repeated notices that I should, from and after the 26th of May, rapidly send in Indians for emigration.

By the 19th of June, the Hiwassee and Tennessee rivers had almost ceased to be navigable, and were still rapidly falling. It was also known that the Arkansas was in as bad a state, and that the land routes, in great part, had become sickly, with a scarcity of good drinking water. Hence, on the petition of the principal Indians *in the country*, I assumed the responsibility, in favor of life, of suspending further emigration until the return of the cool season, (September 1,) and stipulated conditions with the Indians, which enabled me soon to begin to discharge the militia and to send off three regular regiments—two to the Canada frontiers, and one to Florida—points where I knew they were much wanted.

For the *motives* of the responsibility assumed, (soon approved by the Secretary,) and the *conditions* obtained from the Indians, see my corres-

pondence generally of that period, a part of which is noticed by Mr. Crawford in his report to the Department, endorsed "received August 10th, 1840," pages 4 and 5.

By the conditions then obtained, the great body of the Cherokees remaining east for the first time consented to emigrate, or to do any act tending to their emigration.

At this time, and much later, John Ross and the other six delegates were still in Washington, negotiating with the Secretary, although under the sign manual of the President, appointing me a commissioner to treat, &c., negotiations had been transferred to the Cherokee country, (Mr. Poinsett, at the date of my commission, April, 1838, was sick in bed,) and, as I have since learned, knew nothing of that commission.

Immediately after the 19th of June (N. Smith, superintendent, &c., being gone to the west of the Mississippi, and having devolved his duties on Captain Page, principal disbursing agent) I caused preliminary measures to be taken, such as inviting by advertisements, far and near, sealed proposals for wagons, subsistence, &c. The proposals to be opened and acted upon at a day named, I think late in August, in order to a renewal of the emigration at the beginning of September. In the mean time, the operations of the troops went on with vigor, and the collection of the Indians was soon completed.

Prior to the 19th of June, as I subsequently learned, Captain Page had, with the approbation and at the instance of N. Smith, but without my knowledge, (I was distant from them, at the time, one hundred and twenty miles,) taken steps towards a contract with certain citizens, (Clements, I think, and others,) for supplies on the land routes. After I had caused him (Captain Page) to advertise for proposals, I first heard of those steps, and condemning the terms proposed as extravagant, (sixteen cents the ration,) he distinctly told me that *he had done nothing to bind the United States*. The contract itself I never saw until within a year, when it was sent to me by the Committee of Claims in the House of Representatives, and Captain Page did not inform me in 1838 that he had *signed* one for such supplies. Of my answer to the chairman of the committee, (the Hon. Mr. Russell,) I retained no copy.

Learning, from all the Indians within my reach, that they had the utmost repugnance to be removed by contract, in the manner of the Chickasaws, Choctaws, and Creeks, and that if they were put under such contract they would break and run from the emigrating camps, and from the roads, I rejected, with the advice and concurrence of N. Smith, in whom, with the Government, I yet confided, all proposals of that sort, from Clements, I think; Judge Iverson, in May; and a partner of his, in July; from John Mason, jr., &c. In the determination to carry on the emigration by agents and troops of the United States, I continued firm up to the arrival of John Ross and the other six delegates, (about, I think, the 13th July,) when I received directions from the Secretary to place the further movement in their hands.

The drought that nearly desolated so many States in 1838 commenced in the Southwest at the end of May, and continued *into* October. During the latter eight or ten weeks of its continuance, it would have been impossible for a detachment of one hundred Indians, with their horses, to have found water on the land routes, for many and many marches together. Hence, all the subsequent difficulties and embarrassments in my plans, and the emigration

itself; for, but for the drought, I would have quashed the contract with Lewis Ross as extravagant, and the renewed movement, beginning with September, would have escaped ice, snow, and bad roads, and been ended in eighty days, by each detachment. The drought was a calamity to the country generally, and particularly so to the poor Cherokees.

I. The first item in the claim of John or Lewis Ross against the United States, as trustees, &c., is \$94,407 38 $\frac{1}{4}$. This claim, or the paper presented to me at Athens, and referred by me to Captain Page, with instructions, (November 14, 1838,) was for \$92,781 50; for omissions, \$1,625 88 $\frac{1}{4}$ were added after I saw the paper.

This paper, it is presumed, is still in the hands of Captain Page; for, from the two reports of Mr. Crawford, before me, addressed to the Secretary of War, it does not appear to have been transmitted to the Indian bureau. Nor does it appear from those reports, and from John Ross's letter to the Secretary of War, dated May 4, 1841, (page 2,) that Captain Page gave any attention to my instructions to him of November 14, 1838. I am otherwise equally ignorant of what was done by him in this matter, having left that country, under urgent instructions, for the Canada frontiers, immediately thereafter.

That a portion of this sum is justly due I do not doubt; but that some of the issues charged for were permitted, and afterwards certified to by John Ross, to swell the profits of his brother Lewis, is possible. Indeed, the more I look back upon the correspondence, and all the circumstances of the time, the more this suspicion gains upon me.

It is either unlucky for Mr. Lewis Ross, or more so for the Cherokee people, that they should have specially chosen him to be their purveyor or contractor on the route, and then have placed him, by their own acts, under the control of his brother, their principal chief, and, for the greater part of the time, sole agent for emigration.

It is clear that issues made to detachments of emigrants, in camp, whilst organizing, and whilst all were near to the United States agents, for issues, do not fall under Mr. L. Ross's contract for supplies *on the road*. Nevertheless, if the issues were made by him, and duplicate issues not made by the United States agents, he is certainly entitled to have the value of such issues refunded, with a moderate allowance for trouble, &c., independent of the contract. (See my letters to John Ross and Captain Page, November 14, 1838; to Mr. Crawford, Commissioner, &c., September 19, 1840; and the *principle* laid down in the reply I made to J. Ross and others, August 25, 1838.) It ought before to have been stated, that it was at this date I would have quashed the contract with L. Ross, but for the information just then received from Arkansas, that the drought had nearly desolated the country throughout the whole route west, and which, it was thought, would probably double the price of provisions of every kind; for it was supposed that the rivers would still be too low, in September and October, to enable the contractor to import supplies from a distance.

The issues made to three detachments, (see page 2 of my letter to John Ross, November 14, 1838,) after they had actually marched some distance, and whilst halted by my order, on account of the drought, so far as they are embraced in the above item, clearly fall within the contract. I refer the discrimination again to Captain Page. It is evident that, for the movement of more than 12,000 souls by land, a sufficient number of wagons and horses could not be found at hand, just as they were from time to time

wanted. To have them at hand, measures were necessary in advance. Hence, in July, the special agents began to scour the country around, and, by the middle of August, to the extent of 150 miles, to buy and to hire wagons and teams. Many came in by the 1st of August, and all the teams were fed weeks before the 1st of October; and, finally, the movement was delayed thirty odd days longer by the drought. Few saddle horses were purchased for the movement. Indian ponies equalled 250 for every 1,000 souls.

II. The second item is \$581,346 88½ less the first item; that is, \$486,939 50¼.

Under this head, I must say that the understanding of the parties was common and distinct, that the 80 days' allowed for the movement of each detachment, *by land*, was a mere assumption of a basis on which to calculate for the moment the advances to be made by the United States on account of the movement, and to set it agoing. If the advances proved to be too great, the excess was to be paid into the treasury of the nation; if too little, on account of more time in the movement, the United States were to make up the difference from the trust fund. This understanding is distinctly stated in my letter to J. Ross, November 14, 1838. Until late in the season, it was not doubted that the detachments, one with another, would make the movement in the time estimated, 80 days.

The affidavits in the bundle throw much light on the difficulties and delays of the movement—snow, ice, and, consequently, bad roads. In crossing Walden's ridge and the Cumberland mountain, I found much snow as early as the 17th of November. The weather was unusually cold on the Ohio, in Kentucky, and all the way to Lake Erie, where I arrived about the 1st of December. Indeed, navigation on that great sheet of water had been stopped above Huron river, by ice, at least six weeks earlier than in the preceding year, as I know by personal observation.

I was aware that all the detachments moved slowly as far as the Ohio. I saw many of them on the road; but Indians are proverbially dilatory in their migrations, even when entirely voluntary. I ought not, therefore, to charge the delay, up to the Ohio, to any connivance on the part of John or Lewis Ross. Beyond that point, the season and the roads became worse and worse, as the affidavits show, and as I can, on reflection, well believe; and the difficulty and cost of procuring provisions greater and greater.

As to the discrepancies between the number of Indians mustered by Captain Page east, the number charged for by the Rosses, and the number received west by Captain Stephenson, I know not what to say. That there should be discrepancies is natural. The Rosses, I perceive, always charge for the greatest number.

I fully concur with the Commissioner of Indian Affairs in the opinion that there can be no sort of pretence for the charge made on account of wagons and teams, returning from the West to the East, if, as he says, not a wagon and team did return.

I know not how to account for the fact that so many doubtful and extravagant charges should be made by the Rosses against the funds of their nation, unless it be to augment the profits of Lewis, and perhaps of John; or perhaps, again, to increase (by disgorging) the *per capita* of their party, to the prejudice of the treaty party of the same nation.

Whether those party dissensions have been healed, and the signers and friends of the treaty are now fully represented in the national council, I

know not, having no information from that people in the last three years. I observe, however, among the papers before me, belonging to the War Department, one that purports to be the copy of a long preamble, with resolutions annexed, passed by the two branches of the Cherokee national council, which audits and sustains, in the fullest manner, the two items above, *and to the precise aggregate amount claimed, \$581,346 88½.*

If this document be genuine, and has emanated from the Government of the nation, it would seem to be a sufficient voucher on which to make the payment. Whether the minority or treaty-making party, whose *per capita* may be materially lessened by the excess of the charges, have consented to those resolutions, I know not; nor do I see, if they have not assented, how justice can conveniently, and in a regular form, be done to them in the premises.

I would, then, respectfully suggest, that either the resolutions be accepted, and the whole claim be paid over according to the resolutions; or that only what may seem to be justly due to L. Ross be now paid, and the remainder suspended, and referred to a board of commissioners authorized to sit in the Cherokee country; and then, upon full evidence, to report on the disputed items, and the excess under the other heads; hearing, of course, some of the chiefs of the treaty-making party.

All which is respectfully submitted.

WINFIELD SCOTT.

HEADQUARTERS, EASTERN DIVISION,

Elizabethtown, N. J., June 17, 1841.

I have omitted, in the above remarks, to notice the party emigrated by water, under the directions of Captain Page and John Ross. This detachment, clearly, does not fall within the estimated cost per head, (\$65 80,) which included wagons, saddle horses, &c., *helps* not required in boats. Please read, in connexion with the charge on account of this water detachment, my instructions to Captain Page, in two letters, dated, respectively, November 1st and 15th, 1838; and, also, the affidavit of H. H. Lea. Not finding those letters, in the bundle, (from the War Department,) I have caused them to be copied from my record book, and placed in the bundle. Again: it would seem that Captain Page did nothing under those positive and precise instructions.

WINFIELD SCOTT.

CHEROKEE AGENCY, *August 20, 1835.*

SIR: In the present state of affairs, in relation to the interests of the Cherokee nation, we take leave to submit the following views, and believe they merit your grave and impartial consideration.

We would not take the responsibility of this step, if we were not under the deepest conviction of its importance and justice.

Our confidence in your uprightness, and in the high character which you have dearly earned, (which is in part the property of a great republic,) will not allow us to suppose that you will sanction or permit an abuse which you have the power to control or remedy. Animated by these sen-

timents, we beg leave, in the discharge of what we believe our duty, briefly to state the part which we understand Mr. John Ross has acted since you conferred upon him the superintendency of the removal of the Cherokees.

Among the arguments, as we learn, which Mr. Ross used to show the propriety of investing him *with absolute power*, he insisted that the late contract promoted a large individual speculation. That, under his guidance, he would save, in the expenditures for supplies, at least one hundred thousand dollars to the nation. Instead of this, we think his present contract has added largely to the expense to be incurred. As soon as he obtained possession of absolute power, he conferred, by the aid of his friends, the contract for supplies upon his brother, Lewis Ross, without offering it to public competition, so as to allow to the nation the benefit of its results.

The contract was made for emigrant's ration at 16 cents. He skilfully added, it is true, the items of sugar and coffee; but the price upon the horse ration was largely advanced. By this arrangement, he gave to his brother a more extravagant contract than that which was formerly made. The actual partners in the contract, we understand, are Lewis Ross, and John McGhee, of the State of Tennessee, and two other citizens of the States, as under partners.

We contend that the contract ought to have been let out to the lowest bidder; that the nation, as well those who have already emigrated as those who are present, are under the *protection* of a *solemn treaty* against every abuse of power, and that that protection is wisely confided to the United States; that although the chief representation of the power of the United States may have deemed it fit and proper, and most expedient, to confer certain powers upon Mr. John Ross, yet that *no abuse and improper expenditure of the money belonging to the nation* can justly be permitted to be made by Mr. Ross, in violation of the treaty; that *every expediency* should be within the purview of the provisions of that treaty; and that in all moneys that are to be expended, out of funds appropriated to the nation for a specific object, the United States *are bound to see* that they are *most fairly and judiciously applied*. Any other rule, it must be perceived at once, would be attended, in its tendency, with the defeat of the object of the Government of the United States in making the treaty, and work a mischievous injustice to the Cherokee nation. For example: if Mr. John Ross may be allowed to distribute a *gratuitous patronage* to his family and friends, worth two hundred thousand dollars, as in this instance, he may exhaust, by the same kind prodigality, the whole appropriation, and leave the *objects* of the Government of the United States but half accomplished. The argument is, if he can improperly expend one sum, he may, by the same system of reasoning, improperly expend the whole. Hence the duty of protection on the *part of the United States* is of a two-fold character: that the objects designed may be attained by the Government; and that the Cherokees may have full justice done to them, and the largest possible sum saved for their use and benefit. The treaty (as all treaties of the same contracting parties do) recognises the right of protection to the Cherokees from the United States; and although it might be particularly gratifying to the feelings of Mr. John Ross to give such a direction to the contract as it now has, it is, nevertheless, wholly inconsistent with every provision of the treaty, and *destructive of the interest of the nation*. The moneyed power and patronage of every Government and people of the earth have been objects of jealous vigilance; and it cannot be presumed

that we should feel indifferent to so vital an interest to our nation. We are just rising into a state of civilization; and the saving of one hundred thousand dollars to the Cherokee nation, in such a position, is of the gravest importance. It may be added to our school fund, and may, beyond the father of rivers, when we go, become the means of instructing thousands who are yet unborn. Indeed it is useless to amplify upon the considerations which are connected with this question. They are numerous, imposing, and irresistible.

Against the contract, therefore, which Mr. John Ross has made, which is at variance with all his professions, and deeply injurious to the nation, and *against the mode* in which it was made, for the supply of the Indians on their route to Arkansas, we, the undersigned committee of the Cherokee nation, duly recognised under the treaty, which is the supreme law of the land, do enter our solemn protest; "and we appeal to you, as the official organ of the United States, for the immediate redress of this *great and greivous wrong*." We insist, as of right, that the contract should be let out by public advertisement, by the proper disbursing officer of the United States, to the lowest bidder, at as short notice as you may deem expedient. We pledge ourselves that there are *individuals now upon this ground, of the first respectability in point of character and property*, who will take the contract at a much less sum, and by which one hundred thousand dollars will be saved to the Cherokee nation. And we also pledge ourselves that they will be forthwith prepared with supplies, without the delay of a single day. Inasmuch as you superseded the former contract, because it had not been made publicly known, and was alleged to be extravagant, we, appealing to your justice, your humanity, and your firmness, demand that this private contract, or rather gratuitous, fraternal gift, which has been bestowed upon Lewis Ross by his brother John, shall be superseded by a *fair and open and publicly advertised contract by the United States disbursing officer*, and to be free to the competition of all persons. If Mr. Lewis Ross, as a fair competitor, along with his friend Mr. McGhee, of Tennessee, and their associates, Mr. Calhoun and Mr. Gordon, the one of Tennessee and the other of Illinois, shall obtain the contract as the lowest bidders, we shall most cheerfully acquiesce, and satisfied that a vast sum of money will be saved to the Cherokee nation.

Here is presented a huge individual speculation, into which the professions about agencies, and the saving of a large sum of money to the Cherokee nation, have been resolved. We submit, with the most perfect confidence, whether it is just that the pride of feeling, or opinion, or avarice, or any other passion, of particular individuals, should be nourished, and patronised, and protected, at the sacrifice of the welfare of the Cherokee nation? Whether the present actual contractors, Mr. Lewis Ross, of the Cherokee nation, Mr. John McGhee and Mr. Calhoun, of Tennessee, and Mr. Gordon, of Illinois, the two first as principal and the latter as sub-partners, are particularly entitled to be preferred to *the public good*?

The alternative questions are put before us by the compulsory force of circumstances, either that Mr. Lewis Ross felt himself inadequate to the task of carrying out the contract, and needed their assistance, or else that the pretence, in the original instance, of making it exclusively Cherokee, was hollow, insincere, and for *mere effect*. One of these positions must be true. If so, (and we appeal to the facts, which speak louder than words,) it adds another unanswerable argument, among a hundred of similar char-

acter, against the odious policy of making a private contract in a business of such imposing magnitude, and where the public good should be the first and leading consideration.

In all questions of such deep interest to a whole people, it is wise, and it is the admonition of all experience, that public measures should be adopted without reference to personal considerations, and as certainly, too, that we should look to the opinions which we will entertain five years hence, when the passions of the moment shall have passed away, and the test of practical results will have fixed forever the character of the act. We conceive that to your hands has been committed the power of shaping and modifying this transaction, as well as all others connected with our removal, within the stipulations of the treaty; and that, therefore, to you our posterity will look, as having been, in some sort, the arbiter of their fortunes; for however inconsiderable the very greatest questions of interest to the remnant of a once mighty people may seem, in comparison with the immense events that are being developed in the gigantic march of your own great republic, the posterity of this aboriginal people will hold in the most lively remembrance the transactions of this day, and they will most keenly feel any result which shall subtract from them any portion of their resources. But especially would they feel, with the most painful poignancy, the loss of a vast sum, which needed but ordinary vigilance and diligence, and the simplest application of the plainest rules of practical justice, fully to prevent. And, in proof that our views of that *active protection* which we claim from the United States is correct, we take leave to refer you to the treaty itself, which contemplates *this principle*, by providing that no investment of money shall be made for the Cherokees without the approbation of the President of the United States.

We advance this simply to show that the *protecting power of the Government of the United States to us has been, is intended to be, and must be, for any efficient purpose*, active and pervading, and we deem it unnecessary to press and argue that question in detail; we take it to be an acknowledged proposition by every enlightened and impartial mind. The moneys which have been appropriated by Congress, without exception, were for the purpose of *carrying into effect the treaty*, and every effort which was made by Mr. Ross at Washington to effect the treaty was frowned upon by the strongest marks of reprobation, both by the Senate and House of Representatives. It is in vain for Mr. Ross to say that he does not recognise the treaty. It is the supreme law of the land, and the very spirit of it is that of entire dependence and confidence *on the one side*, and the guaranty of *firm and searching protection on the other*.

We therefore appeal to you for protection against this abuse upon our nation. We are aware that much prejudice has been attempted to be excited in your mind against us; but we appeal from that attempt to your justice and magnanimity, and we place this question where it ought to rest—upon the broad basis of the public good. If it were a mere personal question between Mr. Ross and ourselves, we have many reasons why we should not urge it; but it is one between Mr. Ross and the whole Cherokee nation, as well those who have emigrated as those who remain. And it is narrowed down to the point, whether he shall, under the sanction of the Government of the United States, enrich his brother at the expense of the *whole nation*? For the contract which has been made with him is worth, in net profit, two hundred thousand dollars; while we assert it as our unques-

tionable conviction, that if the contract is put up to the lowest bidder, by public advertisement, by the *disbursing agent of the Government of the United States*, it will be taken at a sum of one hundred thousand dollars less, by as competent men as are to be found any where. We pledge ourselves that it will be taken for a vastly less sum than that for which it is now to be carried out.

In addition to the views which we have here presented, we beg leave to state, that although you may esteem the adoption of certain measures expedient, we cannot but presume that you design all *expediency* shall be kept within the purview of the provisions of the treaty. And, in connexion with this sentiment, we would observe that we think it important that an officer of the Government of the United States should accompany each detachment. This measure we believe important to promote the quiet, order, comfort, and security of the Indians, and the settlements through which they may pass. An officer of the United States *can exert more authority with the Cherokees, and more satisfactorily, under such circumstances.*

By the provisions of the treaty, all those who may prefer it have the right to voluntary emigration; and we propose that, for whatever number may choose to connect themselves for this purpose, the sum of money necessary to carry it out shall be paid over to them, proportionally to the ratio which has been adopted in regard to all others. We deem it our duty to impress our apprehension that, from some quarter or other, efforts have been made to produce erroneous impressions upon your mind, of the nature and extent of the authority of Mr. Ross. To speak properly, in a governmental sense, he possesses no authoritative power over the Indians. Such authority, however, he possesses, as a popular tribune might have with the people whom he had courted and won in the name and by the promises of the Gracchi. But the power of such a leader is as transient as the glory and the triumph of Rienzi. Withdraw your troops to-morrow, and strike the flag of your republic, and, with all the money which you may commit to the hands of Mr. Ross, his promises of immediate energetic emigration will prove vain and abortive.

It has been of great importance to Mr. Ross to have it believed that he possessed a power sufficiently absolute to be successfully exerted without the aid of the United States; and, in the present instance, with his usual skill and tact, he has made it the basis upon which he has projected a revolution of the whole management of the emigration, with the expectation of possessing himself of the whole appropriations. We do believe that the progress of things has not been amended by his new position; and that, under his new administration of the power which he has obtained, *personal interests* are to be promoted, and *national interests sacrificed.*

If we now made an appeal to you for any thing in favor of ourselves personally, as an exclusive privilege, we should expect rejection. But we make an appeal against a *stupendous individual speculation* upon the funds of the nation; and we appeal to you for a voluntary right of emigration, upon equal terms with all other modes, and as the official power of the nation, recognised by the treaty and by the Government of the United States. We now repeat our solemn protest against the existing contract by Mr. Ross, with his brother, as a wanton expenditure of the money of our nation; and, as a dependent remnant of a once mighty people, we claim your protection, as the representative of a great, free, and magnanimous republic, being pledged again and again for *that protection* to us, by the

most solemn treaties. We solemnly insist that you are bound to protect us against such abuses. We solemnly appeal to your high honor, your justice, your firmness, your magnanimity, and the sacred trust which has been committed to your care and guidance, for ourselves and our posterity. By the constitution and laws of the Cherokee nation, the members of the national council were elected by the people, and held their office for the term of two years. The principal chiefs were elected by the council, and held their office for the term of three years. The last election for principal chief was at Red Clay, in 1832, at which time Mr. John Ross was again elected; and his term of office has, we believe, long since expired. The members of the national council were elected at the same time and place, whose term of office has also long since expired. Their present pretended exercise of power and legitimate authority is a usurpation. They have, therefore, no more power than any other individual of the nation, and can justly be considered in no other light. By the treaty of 1835, and supplement of 1836, all political power is vested in the Cherokee committee, to transact all business on behalf of the nation, and they, and they alone, have all the political power in the Cherokee nation east, (see 12th article of the treaty appointing the committee;) and it is against all idea of law and good Government, that two equal powers can exist in the same Government, at the same time, both pretending to exercise the same kind of authority.

We beg leave, in conclusion, to add that such is our entire confidence in the sincerity of your feelings, and your great experience and ability, that we shall most cheerfully acquiesce in your decisions, and, within our humble sphere, both personally and officially, we will exert ourselves to promote and expedite the emigration. We pray that the all-seeing eye may guide your judgment, and that benign blessings may be your ample portion.

The favor of an answer is respectfully requested, as early as may be convenient.

We have the honor to be, sir, with sentiments of the highest regard,
 JOHN A. BELL, *President Com.*
 A. FIELDS.
 D. M. FOREMAN.
 ELLIS S. HARLIN.
 DAVID SANDERS.
 S. W. BELL.
 GEORGE FALLIN, his + mark.
 JOHN KELL.

Major General WINFIELD SCOTT.

HEADQUARTERS, EASTERN DIVISION,
Cherokee Agency, August 22, 1838.

GENTLEMEN: I have received a formal *protest*, signed by the Cherokee committee, now in session, under the treaty of New Echota, in behalf of themselves and their whole nation, against the contract entered into by you with Mr. Lewis Ross, for the supply of rations of subsistence to emigrants and their horses, on the routes to your new country west of the Mississippi.

The protest contains several allegations into which it seems proper to inquire. Among others are the following:

1. That the contract, under which, perhaps, \$400,000 of the money of the Cherokees may be expended, was entered into without public notice, and consequently without any competition whatever;

2. That the rations, established by the contract for persons and horses, are to be paid for at rates which will enable the contractor, with ordinary care and ability, and acting in perfect good faith, to make the enormous profit of more than \$180,000;

3. That there are now, at this place, a company of respectable citizens who are ready and desirous to contract to supply, on the routes, the same established rations for persons and horses, to begin the issues within six days after the date of the agreement, and to continue them on demand, at rates which would save to the nation, on 12,500 emigrants, with their 6,250 horses, at least \$100,000 of the sum likely to be made by Mr. Lewis Ross under the contract conferred upon him; and

4. That the *per capita*, under the treaty, of every Cherokee who has emigrated to the West since 1833, or who is now to be emigrated, will be sensibly affected by the loss of that \$100,000.

Such is the substance of the principal allegations contained in the protest.

In respect to the first, it is not known that any publicity was given by the delegation to their wish to make a contract of the nature in question, and hence the presumption that it was given without bidders or competition.

The calculations on which the second and third objections are founded, as exhibited to me, seem more than plausible.

The fourth allegation of the protest makes a strong appeal to me, as the actual representative of the United States and the absent Cherokees under the treaty of New Echota.

If that part of your people who were directly represented in the recent council that conferred upon you authority to make arrangements with me for carrying on their emigration were alone interested in the moneys provided by the treaty of New Echota, and a recent act of Congress in furtherance of that treaty, the surplus of which moneys, after many deductions, is to be distributed *per capita*, it would be sufficient for the United States that you had been duly delegated to contract for the supplies in question, and there would be no pretence for inquiring whether the terms of such agreement were wise or unwise, economical or extravagant. The money and its application would, in that case, be considerations belonging exclusively to yourselves and your constituents. But, as has been intimated, there are numerous other families, on this and the western side of the Mississippi, directly interested in the economical expenditure of those moneys, and which families were not represented in that council, but whose interests are protected by the treaty, viz: the Cherokees who have emigrated since 1833, and such of the treaty party as remain to be emigrated. The amount of *per capita* money finally to be paid to each individual of those families ought not, therefore, to be diminished by any waste which the United States can prevent.

The contract with Mr. Lewis Ross was entered into without any knowledge on my part. I was, in fact, ignorant of the intention of the delegates to obtain subsistence for the emigrants on the road in that form, until some time after the contract had been actually signed. Until then, I had been led to suppose their intention was to purchase on the road the subsistence that each party of emigrants might require, and only as required;

for, when the second time I gave information that I had caused advertisements to be inserted in many newspapers, inviting sealed proposals for furnishing all the rations which would be required on the routes of emigration, the benefits of which proposals were freely offered to the delegation, they silently declined, or at least showed no wish to profit by the offer; whereupon, in their presence, I gave directions to cause those advertisements to be discontinued. This occurred some time before the date of the contract with Mr. Lewis Ross, which, when seen, after another interval of many days, was neither approved nor disapproved by me.

Perhaps it may be thought that I have, by the terms of the arrangement entered into with the delegation, deprived the United States of the right to adopt or to inquire into the objections which have been brought to my notice by the protest. Such position cannot be maintained.

The basis or condition of that arrangement, accepted by the delegation, and not since modified in any material particular, is laid down in my reply to the delegation, dated the 25th ultimo. After stating those conditions, I distinctly said: "The foregoing conditions being agreed to, the United States, through me, are willing to stipulate to pay over to the Cherokee functionaries, from time to time, such portion of the moneys appropriated for the emigration *as may seem reasonable* to prepare for and carry it out." And when the conditions had been accepted, I, three days later, repeated: "The moneys which, from time to time, may be deemed necessary to prepare for and carry on the emigration, you will please make estimates for, addressed to me, specifying the immediate objects; and if the estimates shall appear reasonable, they shall be promptly complied with."

Now, if the contract in question be liable to the objections stated, it may not appear to me "reasonable" to make advances or payments to carry it into effect.

I am aware that the delegation discussed with me a general estimate for the emigration of every thousand Cherokees, in which were found the items of sixteen cents a day for the subsistence of each person, and forty cents a day for the subsistence of each horse. The estimate, though deemed extravagant, was finally approved by me, and defended (until I saw the contract signed with Mr. L. Ross) on the grounds that it was but a rough estimate, and that if the cost, on actual experience, of the several items should be found to be less, the difference in the hands of the United States or those of the delegation would not be lost, but go to the benefit of the Cherokee nation.

This was the idea held out by one or more of the delegation, and adopted by me; for I could not possibly imagine that individuals of tried integrity and intelligence, acting for and on account of their constituents, could fail to execute their high trust with care and judgment; nor can I yet believe that they have thrown away \$180,000 of their nation's money. Nevertheless, I have deemed it due to the delegation and all concerned to give the former an opportunity to reply to the foregoing allegations.

Trusting that any accidental error that has been committed, in making the contract, may be speedily corrected, or that it may be satisfactorily shown that there has been no serious improvidence, I remain, gentlemen, &c.

WINFIELD SCOTT.

To Messrs. J. ROSS, E. HICKS, J. BROWN, E. GUNTER, SITUAKEE, WHITE PATH, and R. TAYLOR, *Cherokee Delegation*, &c.

John H. Payne sworn.

First interrogatory. Are you acquainted with Mr. John Ross? If ay, state whether you have ever been employed by him, and for what purpose.

Answer to first interrogatory. I am acquainted with Mr. John Ross. I have been employed by him. I was employed by him, but not with any business understanding, occasionally, from soon after our first acquaintance at the close of 1835 to 1838; but, from 1838 to 1841, I was employed by him expressly. It was for the purpose of assisting him and the Cherokee delegation, sometimes, with him, to compose the difficulties between the Cherokees and the United States.

Second interrogatory. Was Mr. Ross opposed to the execution of the treaty made with the Cherokees in 1835-'6? If ay, state in what manner his opposition was manifested. State particularly.

Answer to second interrogatory. Mr. Ross never, to my knowledge, admitted, either directly or indirectly, that what the interrogatory terms "the treaty made with the Cherokees in 1835-'6," either was fairly entitled to be considered as a real treaty, or was made with the Cherokees as a nation. His opposition to it, so far as I can speak from my own knowledge, consisted exclusively in remonstrating with the two Houses of Congress, in seeking to negotiate with the Government at Washington, and in encouraging representations of the true views of the Cherokees, as a people, to the people of the United States.

Third interrogatory. Has Mr. Ross ever informed you that he would never recognise the validity of the above-mentioned treaty? If ay, when was such declaration made? State fully all that he said on the subject.

Answer to third interrogatory. I have always supposed that Mr. Ross never would recognise the validity of what the interrogatory terms "the treaty made with the Cherokees in 1835-'6." I cannot recollect any particular declaration, from him, that such would unalterably continue to be his determination; but, as he never seemed to regard it otherwise than as a fraud, I have uniformly inferred that he never would recognise its validity. I cannot state fully all that he said upon the subject, because it was the theme of conversation in so many shapes, from the time I first knew him up to that of his visit to Washington last year; but, from the beginning to the end of my communications with him, his views of it never appeared to vary.

Fourth interrogatory. Were you present in Washington in 1839, when Mr. Ross presented his claim to the Department of War, for the removal of the Cherokees? If ay, state whether the claim was against the United States or the Cherokee nation.

Answer to fourth interrogatory. I was not in Washington when Mr. Ross returned hither at the close of 1839, nor until some time after his arrival. Mr. Ross came, I believe, in December, 1839, and I met him here, by his special request, on the 2d of February, 1840. I cannot say when his claim for the removal of the Cherokees was presented to the Department, but I believe it to have been after my arrival. That claim was only incidentally mentioned to me. I never understood that it was made against the Cherokee nation, but always regarded it as a claim against the United States. Distinctly it seems to be stated as such in the memorial upon the general affairs of the Cherokees and the United States, which appears in

document No. 129, of the House of Representatives, 1st session of 26th Congress, where, on the tenth page, it forms the 4th and last article of the enumeration of objects sought by the delegation signing that memorial. Such also is my construction of the manner in which it was mentioned by John Ross, in a message to the Cherokee council in October, 1840; in resolutions and an order of the same council to John Ross for its enforcement, as well as in other official documents.

Fifth interrogatory. Were you present at a council in the Cherokee nation, when Mr. John Ross delivered an address to his people? If ay, state the substance of such address as particularly as you can. If you have a copy, please annex it.

Answer to fifth interrogatory. I have been present at two sessions of the council in the Cherokee nation, at each of which Mr. John Ross delivered an address to the Cherokee people, or rather an official message to the national committee, or Indian senate, and the national council, or Indian representatives, assembled in national council, or Indian congress; which address, or message, on each occasion, was, according to the Cherokee custom, read openly before all the people, by Mr. Ross, in English, and translated, sentence by sentence, into Cherokee, by an interpreter.

The first of these messages was delivered in the old Cherokee nation, at the Red Clay council ground, east of the Mississippi, in October, 1835.

The second of these messages was delivered in the present Cherokee nation, at Tahlequah council ground, west of the Arkansas, in October, 1840.

The following a copy of the message delivered in the old Cherokee nation, in October, 1835:

"To the committee and council in general council convened:

FRIENDS AND FELLOW-CITIZENS: It has pleased the great Author of our existence to permit you once more to assemble under your legislative authority, to deliberate and act upon the affairs of your much-oppressed and aggrieved nation. In the discharge of this sacred trust and solemn duty, it is to be hoped that you may be duly impressed with the importance of being united among yourselves, in order that your deliberations and acts may not only give general satisfaction to the people, but that they may prove to be salutary and permanently beneficial to the common welfare of our afflicted nation. Being persuaded that this hope will be fully realized, I proceed to present such subjects for your information as will necessarily require your deliberation and action.

The documents containing the proceedings of the delegation at Washington were fully read and explained to you at the extra session of the general council in May last; as also the contents of a printed document purporting to be a treaty between John F. Schermerhorn, on the part of the United States, and John Ridge and others, unauthorized individuals of this nation, together with an address from the President of the United States to the Cherokee people thereto annexed; which treaty, however, was considered merely as containing a series of propositions for presentation before the nation in general council, for the consideration and approbation of the people. By a review of the proceedings of the delegation, you will see that they, after an unsuccessful effort to draw from the President of the United States any terms upon which he would be willing to 'negotiate for a final termination of the sufferings of our people, that they might repose

in peace and comfort in the land of their nativity, under the enjoyment of such rights and privileges as belong to freemen,' were compelled, by the force of circumstances, to present two distinct propositions as the basis upon which they would have recommended a treaty with the United States for your serious consideration and the acceptance of the nation. How far the delegation would have succeeded in coming to some definite understanding with the officers of the Government, for the adjustment of the existing difficulties, had it not been for the improper interference of intermeddlers, I am not prepared to say; but it is evident, from the facts attending this negotiation, that it is probable something might have been effected. It will be seen by the note of the delegation to the honorable Secretary of War, bearing date the 27th of February last, that they desired the President to be reminded of his former remarks concerning his determination to be as liberal as the friends of the Indians or the Senate would allow him; and respectfully requested that he would submit our propositions to the Senate, in order that the sense of that honorable body might be had on them; but, in place of a written reply to this note, the delegation received through Judge Underwood a verbal message from the Secretary, requesting an interview with him in his office the next morning, and which was complied with. At this interview, the Secretary urged upon them the necessity of their stating in writing to the Department, before their propositions could be submitted by the President, that, 'so far as the delegation was concerned, they would abide the award of the American Senate upon their propositions, and recommend the same for the final determination of the nation.' After which, the honorable Secretary then left the delegation in his office, to make up their minds upon the subject, until his return from a visit to the President; and, upon his return, the delegation having prepared the letter of the 28th of February in his office, placed it into his hands, who then assured the delegation that their propositions should be cheerfully submitted, and that the President had again expressed himself disposed to 'go as far as the Senate.' Upon these distinct assurances and understanding, the delegation took leave of the honorable Secretary, and, on leaving the room, he placed into my hands the written memorandum of that date, and remarked that I could read it at my own leisure. The bearing of this paper I have never been able to see into; those of our friends who read it were no less puzzled than myself. Soon after this, the delegation were informed that an interview had taken place between Messrs. Schermerhorn, Currey, and Ridge, with the President, but the object and import of which were not communicated. After this, it was stated that the President would not submit the propositions of the delegation before the Senate; but that the Secretary of War had requested the Indian Committee to bring up the question before the Senate, and that the Senators considered such a course to be informal; consequently, a correspondence between the honorable chairman and the honorable Secretary of War ensued—the latter giving it as the opinion of the President that it would be unconstitutional for him to advise with the Senate in reference to the subject, and the former insisting on the constitutionality of the course, and referring to an instance in which General Washington had conferred with the Senate on the basis of the treaty of Holston, (1791,) between the United States and this nation, as a precedent, &c. It has also been stated that certain Senators had waited on the President, and urged upon him the expediency of his conferring with the Senate on the subject of our propositions, with the hope that such a

course might lead to a speedy and final settlement of the Cherokee difficulties; but that the President had given them to understand that he had nothing to submit before the Senate on the subject; that whenever he effected a treaty with the Cherokees, he would then call upon the Senate to ratify it. Having been thus greatly disappointed in their reasonable expectations, in reference to the submission of their propositions before the Senate by the President, the delegation, at a late hour on the night of the 3d of March last, presented a memorial to the Senate, together with a copy of their correspondence with the Executive department, and appealing to the honor, magnanimity, and justice of the American Government, to determine whether their propositions ought not to be met; and if not, whether the rights of their nation, under existing treaties, ought not to be enforced; or whether the Cherokee people ought to be forced to abandon their country by the force of unprovoked oppressions, under the exercise of State authority, &c. From the facts herein stated, you will readily perceive that the Senate was greatly cramped in acting upon this delicate question, in consequence of the President's refusal to advise with that honorable body upon it. The action of the Senate upon the subject, under these circumstances, is nothing more than a mere expression of opinion, which cannot be obligatory on the President; but, had the whole subject been constitutionally referred by him, for the advice of the Senate, then the act would have been viewed in a different light. The resolution of the Senate, therefore, which was adopted, on the report of the Committee on Indian Affairs, respecting the amount which ought to be given to the Cherokees for their land, is *merely an opinion*; it is not an 'AWARD;' the President had no agency in the matter, and the Senate did not sit on the propositions of the delegation as *arbitrators*; there is no committal on the part of the delegation, in reference to the propositions submitted by them to the President, nor is the nation in any degree entrammelled by them. The voice of the nation having sustained the resolution adopted by you at the extra session of the general council in May last, in opposition to the treaty propositions which have been herein referred to, the grave question which now presents itself for your consideration is, what measures can or ought to be adopted, for the common welfare of the nation?

I submit for your information copies of sundry correspondences between Governor Carroll, Messrs. Shermerhorn and Currey, and myself, on various subjects. You will perceive, from a part of this correspondence, that the national printing press and types have been seized, under the countenance, contrivance, and responsibility, of some of the agents of the General Government, in conjunction with the Georgia guard, Standwatie, and others. Previous to the perpetration of this high-handed measure, I had, in pursuance of your resolution, employed Mr. Peter Hilderbrand's wagon and team to haul this property to Red Clay, but preparatory to which, I had engaged Mr. Samuel K. Weir to collect and pack up the types, papers, books, and other articles, connected with the press, and to place them all in Mr. Elijah Hicks's house for safe keeping, and in readiness for transportation, and which has been done accordingly: and about two hours previous to the arrival of the wagon at New Echota, the Georgia guard, under the command of Colonel Bishop, paraded in front of Mr. Hicks's house, (in the absence of Mr. Hicks,) and placed an armed sentinel at the door, whilst Standwatie carried out the packages, and placed them into wagons that hauled them off under the military escort of Colonel Bishop.

Mr. Elijah Hicks and James J. Trott, who were appointed as agents to assess the valuation of the improvements of which the citizens of the nation have been dispossessed under State authority and otherwise, with the view of estimating a just indemnification for their losses, and also Messrs. Walter S. Adair and Thomas F. Taylor, who were appointed as agents for the purpose of collecting and registering the claims of our citizens for spoliation committed upon their property, &c., have each of them been arrested by the Georgia guard, and detained ten or twelve days as prisoners, for executing the duties assigned to them under your resolution of the 19th of May last. Thus the objects for which the agents were appointed have been defeated.

It would seem, from the violent and illegal procedures on the part of the agents of the General and State Governments, in conjunction with their satellites, that it is not an object to be desired by them, that our difficulties should be speedily, harmoniously, and honorably terminated; for the manner of the seizure of the public press could not have been sanctioned for any other purpose than to stifle the voice of the Cherokee people, raised by their cries from the wounds inflicted upon them by the unsparing hand of their oppressors, and that the ear of humanity might thereby be prevented from hearing them. The arrests of the before-mentioned agents were equally uncalled-for and unwarrantable, as the object of their appointment had nothing in view, further than as a measure preparatory to an ultimate arrangement with the United States Government for a final settlement of these claims; and it was essentially important that the duties required of those agents should have been performed, to have enabled the nation to act understandingly and to do strict justice to her own citizens.

It is not necessary that I should comment upon the several subjects embraced by the correspondences laid before you, as they will be fully understood when read. From the peculiar position in which our national affairs are placed, you will determine upon the expediency of authorizing the appointment of a delegation to represent the whole nation before the Government of the United States, with full powers to settle the difficulties upon such principles as the interests and permanent welfare of the Cherokee people shall require. It is to be hoped that the President will now be fully convinced, by the many proofs given, that the Cherokee people are united in the support of their common rights, and that they are determined never to sanction any measure which may be adopted to affect those rights by any unauthorized individuals. And it is very much to be regretted that there are individuals to be found, from among the young men of our country, who, regardless of the wishes of the great mass of the people and the constituted authorities, seem disposed to assume to themselves the power of dictation over the rights, liberties, and happiness of the nation, by pursuing an opposite course of policy to that which has been employed in our exertions to bring about a satisfactory arrangement with the United States Government, for the adjustment of those difficulties which have been created by Georgia with this nation. No good can result from such conduct. Its tendencies are only calculated to produce dissensions and divisions among the people, which can but result in evil and ruinous consequences to the best interests of the nation, if persevered in; but, fortunately, the forbearance and good sense of the people have discountenanced and will never cherish it; it is, therefore, to be hoped that these young men will return to their sense of duty towards their brothers and sisters,

fathers and mothers, friends and fellow-countrymen, and, as peaceable and patriotic citizens, unite, hand in hand with them, in the support of our common cause, and patiently await the final issue of our controversy. And, should it please the Providence of God to extricate us from the difficulties which surround us, and once more to permit us to enjoy prosperity and happiness, let all participate in those blessings; but, on the other hand, should it be His will that our nation shall be doomed to inextricable adversity and extinction, then, as one people, let us be united, and calmly disappear with colors flying, and leave a character on the page of history that will never dishonor the name of the Cherokee nation."

The message delivered by Mr. Ross in the present Cherokee nation, in October, 1840, was as follows :

"**FRIENDS AND FELLOW-CITIZENS :** In meeting you, after the lapse of more than a year from the term of our organization, once again, as an united people, it affords me greater satisfaction than I can express to have it in my power to congratulate you on the good spirit which seems to pervade our nation. Our thanks should be specially poured forth to the Great Source of Blessings, for his fostering beneficence, under circumstances of no common peril. There is no recorded instance, within my memory, of an entire change in the position of so extensive a community, even when wrought with its own consent, which has not been made the pretext for frightful disorders, fomented by the restless and the disaffected. I think it due to our own people to remind them of the praise they merit for having, although their position was altered not voluntarily, but without their consent and against their will, borne the necessity in a noble temper of philosophic endurance, and to encourage them to persevere in the same disposition, by picturing the gratitude they will gain from their posterity for having, after only a few sad days of confusion, even while destitution, disease, and death, in every appalling form, raged around them, at once emerged from the tempestuous chaos into the calm sunshine of a settled Government, to which neither suffering nor intrigue appear likely ever to render them untrue. When the clouds over us were the darkest, it afforded the true lovers of peace no ordinary consolation to be assured, in communications from the Secretary of War at Washington city, and from the Indian Commissioner, that it was the unalterable principle of the United States, in dealing with all Indian nations, to respect the will of their majorities; and, as such is the only principle ever to be tolerated among the Cherokees, we ought no longer to despair of satisfactorily adjusting our affairs with the Power by whom it is thus solemnly announced as her great law. I am the more encouraged in this impression, when I observe, which I do with unfeigned delight, that some of those who lately differed most strenuously in opinion with their fellow-countrymen now array themselves on the side of the majority, and are associated with you as representatives of the nation. The reconciliation of the minority to the constitution and laws cannot but destroy the misapprehensions growing out of the state of things prevailing while the few kept back from the many. If this spirit of unanimity is cherished, and continues thus hourly to extend, it will remove every cause of difficulty, and, under the express declarations of the Secretary himself, render our appeals for justice irresistible.

Had our true position in this respect been understood at Washington, I trust I should have been enabled to present you a less discouraging report

from your delegation which has recently returned from that city. But, as it is, I am compelled to announce their entire failure to gain any of the objects of their mission. The memorial presented by them to Congress is herewith enclosed, as well as their communication to the Indian Committee, to whom that memorial was referred. These papers are accompanied by the official reports of the War Department, and by a great number of letters illustrating the various points upon which they treat. The report of the Indian Committee, upon the whole matter, will be found in the same package. A letter of the chairman will explain to you, in part, why there was no action upon the resolutions following the report. It may not be irrelevant to add, that the question of the pending Presidential election has too entirely absorbed the attention of every party in Congress, for the last few months, to leave the members leisure even for subjects of pressing local importance; those from a distance, and especially those which could not be entertained without calling for expenditures that are admitted at the present moment to be peculiarly inconvenient, were, of course, altogether evaded. The delegation, indeed, were assured, from time to time, that some of their business would soon be taken up; and, after the extremely protracted session of Congress was over, they were still encouraged to remain; but the constitutional term for the annual council was already at hand; no certainty appeared that the decision would not continue to be delayed, and there was every probability that, whatever that decision might prove, it would involve a final reference to Congress, which could not be had before the approaching session. Under these circumstances, the delegation thought it their duty to return.

I abstain from remarking upon the postponement of the just dues to our nation, further than to add, that the unanimity now prevailing among ourselves, and other circumstances, justify the expectation of a change of policy in the United States Government, regarding our affairs. I will, therefore, hope that our countrymen will continue to be patient, and to place every confidence in the honesty and honor of the Government and people of the United States. Let us not afford an excuse for withholding our dues, by dissention among ourselves. Let us remain in the right, and trust to Providence and an upright cause for the result. The points for adjustment at Washington are more numerous and important now than ever. The country taken from us east of the Mississippi still remains unpaid for; the tenure under which our present lands in the West are granted continues undefined, as do the relations which are to subsist between us and the United States. But these multifarious calls are too severely known to you to require that I should enumerate them here.

The utter disregard of all our claims at the American metropolis might have been more injurious than it proved, had it not been for the timely aid of friends, by whom your delegation were enabled to meet the expenses which were to have been defrayed with moneys long overdue from the United States, that, when applied for under your requisition, were withheld. Thus embarrassed, I claimed, under a protest, the proceeds of a partial valuation for improvements taken from me in our late country, and with these discharged the loan for the nation, and paid all other demands against your delegates.

I must not forget, while upon the subject of our negotiations with the Government of the United States, to call your attention to one topic which has too long escaped our notice—the education fund. From every side I hear

appeals for the establishment of schools among ourselves, and am pressed to explain wherefore the large education fund held in trust for us by the United States is not put in action. To expect that the excellent persons who have so faithfully executed, for so long a time, the duties imposed on them by the board of missions, could meet the wants of a population spreading over so wide a surface, and daily becoming more numerous and more extended, would be indeed extravagant ; nor can there be any reason whatever for overburdening them, when our own provisions for the purpose of instruction are ample, though dormant. I recommend this matter to your attentive consideration.

It was my hope to have had it in my power to close the whole business of the emigration at the present council, but I deeply lament that the course taken by the War Department, in withholding a final settlement, renders it impracticable. When our account, formed upon the basis distinctly understood, between General Scott and our special agents, was presented for payment, frivolous exceptions were taken against portions of it, and a balance due to the nation, of five hundred and eighty-one thousand three hundred and forty-six dollars eighty-eight and a half cents, was left unsettled ; but, upon remonstrance to the President in person, the subject was reopened by the Department, and, when we left Washington, was in a train which leads me to expect that justice will yet be done.

There is one branch of this subject in which so many of our citizens are interested, that I must pause a moment to give it special notice. I allude to the stipulation for the hire of wagons.

The principle upon which the nation estimated our emigration expenses with General Scott was, to receive for them the same amount which the removal would have cost, had it been accomplished, not by us, but by the United States. One of the items stipulated five dollars a day for wagon hire, and two dollars a day for the forage of five horses to each wagon, making seven dollars in all, with an extra allowance at the same rates for returning, limited to forty days. After this basis was settled upon between our special agents and the United States, the furnishing of the forage was included in our agreement with our own contractor. Hence, the daily compensation of five dollars each was all that remained for wagon hire. At the same time it was found that our people, under their peculiarly distressful circumstances, required comforts for which no provision had been made. The appropriation assigned for the return journey not being needed for that purpose, because the wagons were not to return, was accordingly destined for the discharge of contingent expenses not otherwise provided for, such as extra physicians, and thousands of other calls so unavoidable amid the sickness and privations of the journey.

It will be remembered that I myself have made no charge for time nor services, but that I enrolled myself under a conductor of my own appointment, and moved, with my family, on the same terms with my fellow-countrymen ; hence, I am only interested in common with them. Whenever the emigration account against the United States shall be closed, whatever surplus may remain, after a discharge of the various claims due under it, will of course be paid over to the nation.

It would be incorrect to close this communication without expressing my gratitude to the Almighty Source of all health and happiness, for having seen fit to render the diseases which have so sorely afflicted the new emigrants less fatal during the present year than they were throughout the

one preceding. Though sickness has been unsparing, more have survived its ravages. I deeply lament that it has not been permitted to include in the number of those who have escaped two of our most worthy citizens. I allude to Going Snake, the late venerable speaker of the council, and to John Martin, the highly respected chief justice of our supreme court.

I have already, in various parts of this communication, as I have uniformly done throughout my entire connexion with public affairs, endeavored to impress it upon you never to encourage any dispositions towards one another but those of kindness, and to be gentle and forbearing towards our white neighbors and the surrounding tribes of our red brethren, under whatever circumstances may arise. The more difficult our position, the more honor we shall merit in deporting ourselves with prudence. Wherever we are bound, under the faith of treaties, to seek and deliver up aggressors against the whites, let it be done promptly; for it is only by scrupulously observing treaty obligations ourselves, that we can confirm our right to look for their observance towards us from others. In short, let justice, and peace, and friendship, towards all, be perpetually our ruling motto. To your wisdom, as the chosen watchmen of our rights, I now submit all that I have said, conscious that in your hands the interests of our common country are safe. May your labors for the public good merit the smile of Heaven."

Sixth interrogatory. Do you know what disposition was made of the wagons and teams employed in the removal of the Cherokees? If ay, state what it was, and from whom you had your information.

Answer to sixth interrogatory. I know nothing of the disposition of the wagons and teams employed in the removal of the Cherokees. I have heard that they, or most of them, were sold in the Cherokee nation west; and I think I have seen persons come to the house of Mr. Ross there, and that I have heard excuses made for not having paid according to agreement for wagons or horses; and sometimes I may have seen or heard about payments actually completed; but, as it was no business of mine, I took no further notice than that to which I was unavoidably compelled, by the circumstance of being a guest in the room where these conversations passed. I do not remember that any person ever gave me information regarding the disposition of the wagons and teams in question.

Seventh interrogatory. Were you present at the council in 1840, which gave John Ross power to come on to this city? If ay, state what was the nature of the power granted, and by whom granted.

Answer to seventh interrogatory. I am not sure whether I was or was not present in the council when John Ross was authorized to come to this city in 1840; but I was on the council ground several times during that session, and I have a copy of the power granted, which I annex, that it may speak for itself. I understood that it was executed by the council in the usual form, namely: that it was signed by the president of the national committee, concurred in by the speaker and clerk of the national council, and approved by the principal chief, in the same manner with the original power to which it includes a reference, and which is printed in pages 35 and 36 of the constitution and laws of the Cherokee nation, which I submit herewith.*

The following is the copy of the authority granted to John Ross, to which I have just alluded:

* See end of document.

"Whereas, in the month of May, 1838, the Cherokee nation east of the Mississippi was in a state of capture by an army of the United States, under the command of Major General Scott, for the avowed purpose of removal west of the Mississippi :

"And whereas, at that crisis, it was thought expedient by the United States, in order to diminish the sources of irritation produced among the Cherokees by the hereinbefore-stated and other causes, regarded by them as harsh and unauthorized, to change the mode of removal, with an understanding, on the part of the Cherokees, that their remaining concerns should be left for subsequent adjustment :

"And whereas, in consequence of the aforesaid change of policy, General Scott was vested with unlimited powers from the United States Executive to arrange with the Cherokees for their self-removal, and for the withdrawal of his army :

"And whereas, pursuant to the authority in question, General Scott did arrange with the Cherokee nation, through their regularly constituted special agents for that purpose, and which special agents calculated with General Scott a basis for the amount to be paid for the expense, rating the component parts from the customary allowance by the War Department upon such items, when contracted for with citizens of the United States :

"And whereas it was supposed that the emigration might be entirely completed in eighty days, more or less, although it was impossible to covenant for any specific term :

"And whereas it appeared that, if eighty days should be the time consumed in the emigration, the aggregate of the component parts of the aforesaid estimate would make the cost of each person for the eighty days amount to sixty-five dollars and eighty-eight cents ; and hence, on that sum it was concluded to fix as the basis of the charge, to which it was agreed to add the single article of soap, at fifteen cents per pound :

"And whereas it was fully understood, between the Cherokee nation, through their special agents, and General Scott, fully empowered to represent in this matter the United States, that sixty-five dollars and eighty-eight cents, with the aforesaid addition for soap, was a fair allowance for eighty days' expenses each in emigrating the Cherokees ; that amount per head being necessarily liable to reduction or to increase, at the same rate, in the event of a lesser or a greater length of time proving requisite for the purpose than the before-mentioned eighty days :

"And whereas, under the aforesaid arrangement, the Cherokee people were formed into thirteen detachments, and the removal was to proceed by such routes as might appear most eligible ; but its commencement by no means to be delayed beyond the first day of September, one thousand eight hundred and thirty-eight, then next ensuing :

"And whereas these conditions being fully settled, the special agents of the nation, acting on the nation's behalf, after having made divers appointments for the purpose of carrying it into effect, in order to condense the business, did delegate its entire superintendence to one of their body, John Ross ; and by John Ross such persons were deputed for the management of the various departments, on account of the nation, as were considered best qualified for the purpose :

"And whereas, before the first day of September, one thousand eight hundred and thirty-eight, which day formed the limit of the term covenanted for, John Ross caused the removal to be commenced, and the first de-

achment actually to be under way, upon the 28th of August previous; but, in consequence of the awful sickness among the people, and the drought which pervaded the country through which they had to pass, General Scott, and not John Ross, called a halt, and ordered the emigration to be suspended:

"And whereas the emigration, in consequence of this considerateness on the part of General Scott, actually was suspended for several weeks, and thereby a necessity entailed for further delay, and especially among some of the detachments that, on arriving at the Mississippi, found it impassable, from the ice accumulated therein, in consequence of the advance of winter:

"And whereas the different causes of protraction extended the time occupied in removal variously, but in every instance beyond the limit first contemplated of eighty days, and consequently enlarged proportionately the cost of the emigration to the United States:

"And whereas it appears, from the report of John Ross, the superintendent, that there is a balance still in arrear to the Cherokee nation of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and a half cents, which balance has been repeatedly applied for, but the payment of which has been withheld:

"Now, therefore, by the national committee and council of the Cherokee nation, in national council assembled, it is

"*Resolved*, That the conditions of the contract made between General Scott, on the part of the United States, and the special agents, including John Ross, on the behalf of the Cherokee nation, for removing the Cherokees east of the Mississippi to their destination west of Arkansas, have been scrupulously fulfilled on the part of the United States, as represented by General Scott.

"*Resolved*, That the aforesaid failure of the United States to sustain the pledges given to the Cherokee nation by General Scott has caused the deepest distress among numbers of its citizens who have claims upon the balance due; and that a final settlement, especially under the trying circumstances of the Cherokee people of late, is of vital importance.

"*Resolved*, That the authority vested in the special agents, and continued by the act of union between the Eastern and Western Cherokees, passed at Illinois camp ground on the 12th day of July, 1839, and by them conferred upon one of their members, John Ross, as superintendent, with a view to facilitate the duties required of them, be, and the same is hereby, approved and ratified.

"*And further resolved*, (in support of the aforesaid authority,) That, by the Cherokee nation, through their national committee and council, in national council assembled, it is hereby ordered, that the aforesaid John Ross be, and he is hereby, directed and fully empowered to proceed to Washington city, and to urge a settlement of this claim, with all possible expedition, and to apply for and receive from the Government of the United States, in the name of the Cherokee nation, the balance due of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and a half cents, as stated in the account of the emigration claim, in order that the business growing out of it may be brought to a final close."

Eighth interrogatory. Did the power given authorize Mr. Ross to receive the amount of his claim out of the treaty fund? State your knowledge on this subject.

Answer to eighth interrogatory. The copy which I have given of the power contains all I know upon the subject.

Ninth interrogatory. What was the understanding of the council as to the fund out of which Mr. Ross's claim was to be paid? State all you know on the subject.

Answer to ninth interrogatory. The only knowledge I have of the understanding of the council as to the fund out of which the claim of Mr. Ross was to be paid is contained in the copy of their authorization, which is already given.

Tenth interrogatory. Did you aid John Ross in the prosecution of his claim, after it had been rejected by the Secretary of War? If ay, state the means used in obtaining it fully and particularly.

Answer to tenth interrogatory. If the interrogatory refers to the emigration claim, I do not remember any aid, exclusively regarding that claim, rendered by me to John Ross, after its rejection by the Secretary of War. Upon that particular branch of his business I was seldom communicated with by Mr. Ross subsequently to the presentation of his account. The aid I gave to it was principally included in always speaking and writing, whenever an opportunity offered, in support of the general claim of the Cherokee nation, as asserted in their memorial to the Senate and House of Representatives, bearing date February 28, 1840.

Eleventh interrogatory. Against whom was Mr. Ross's claim first charged, and against whom was it charged in the second instance? State particularly all you know in relation to the shifting of this claim from the United States to the treaty fund.

Answer to eleventh interrogatory. I know nothing whatever in relation to any shifting of the emigration claim from the United States to the treaty fund. As John Ross had never, to my knowledge, recognised the treaty, I could not, of course, suppose that he had recognised any treaty fund, as I had never found him to waver upon that point.

Twelfth interrogatory. Are you at present employed in the Department of War? If ay, state in what, and whether the object for which you were employed has been accomplished. If not, what has prevented it?

Answer to twelfth interrogatory. I am not at present employed in the Department of War, and therefore have nothing to answer in relation to the other particulars of the twelfth interrogatory.

JOHN HOWARD PAYNE.

Sworn and subscribed before me, August 6, 1842.

JAMES COOPER, *Chairman Committee.*

Interrogatories propounded to Samuel C. Stambaugh.

1. Was the claim lately presented by Mr. John Ross originally charged against the United States? If ay, state why it was ultimately paid out of the fund due the Cherokee nation under the treaty of 1835.

2. Have you ever heard Mr. Ross say any thing on the subject of the claim above referred to, either before or since its settlement? If ay, state fully and particularly when, where, and what was said.

3. Do you know whether the Cherokees are about to prefer any claims

against the United States, on account of the payment of Ross's claim out of their national fund? If ay, state your knowledge fully.

4. Do you know what has induced the Cherokees to prefer claims, at the present time, against the United States; and do you know what is the foundation of said claims? If ay, state fully and particularly all that you know on the subject.

5. What would have been a fair compensation per head for removing the Cherokees from the nation east to the nation west? What length of time was necessary for the removal in wagons?

6. What disposition was made of the wagons and teams employed in the removal of the Indians?

7. What did the Rosses charge per day for each team employed in the removal? What going, and what returning? State all you know on the subject.

8. Out of what fund were the Rosses paid for the use of the wagons and teams?

Answer to 1st interrogatory. I never saw the account of Mr. John Ross, as originally presented, and cannot say "whether it was charged against the United States;" nor am I informed "why it was ultimately paid out of the fund due the Cherokee nation, under the treaty of 1835." I never saw the decision of the Secretary of War upon that claim, or heard the grounds upon which he directed it to be paid out of the Cherokee fund. My impression always was, pending the prosecution of the claim, that it was against the *United States*, and not the *Cherokee nation*. It was based upon a contract made between the United States and *individuals* of the nation, not sanctioned by any provision of the treaty; and, besides, the fund applicable to removal, as provided by the third supplementary article, executed March 1, 1836, had already been expended—much of it for objects not contemplated by the treaty, and in direct violation of the letter and spirit of that instrument. As early as January, 1838, the sum of \$210,000 had been drawn upon requisitions made by the United States commissioners, who were adjudicating upon claims for abandoned improvements under the treaty of 1835—and they were then only beginning their work. To show that the Department *then* entertained the opinion that the \$600,000 provided by the third supplementary article should cover all the expenses and claims herein specified, I refer the honorable committee to the records of the Indian department, and especially to a letter which I can directly point to, from C. A. Harris, Esq., Commissioner of Indian Affairs, to Lieutenant Van Horne, then disbursing agent at Fort Gibson, Cherokee nation, dated January 25, 1838, which says: "The claims for which requisitions have been made by the commissioner's amount to \$210,000, and the remittances which have been made for your use are \$300,000. There will then be a balance of \$90,000 applicable to *other objects* than the payment of abandoned improvements, &c., and which you will apply to the satisfaction of claims for commutation of subsistence, and others of similar character."

This order provides for the expenditure of the full sum of \$600,000, and, as no reference is made to the application of the *five millions of dollars* appropriated by the same treaty for any of the objects named, it is fair to presume the Department *then* entertained the opinion that all the "*expenses of removal and claims against the Government of the United States*" must be settled out of the appropriation made by the *third supplementary*

article of that treaty. That article provides, that the "sum of \$600,000 shall be applied and distributed agreeably to the provisions of the said treaty." And the Cherokees themselves must have believed that this sum would be sufficient for that purpose, as they provide, in the same clause, for an unexpended balance thus: "*And any surplus which may remain, after removal and payment of the claims so ascertained, shall be turned over and belong to the education fund.*"

The "supplementary articles" to the New Echota treaty qualify and give character to that instrument. The treaty itself is a batch of inconsistencies, that, without this *codicil*, could not be executed. By the 5th article, the United States clearly makes itself liable for the expenses of *removing the Cherokees to their new homes*, and for *their subsistence one year after their removal*! And then, again, in the 15th article, the "expenses of removal and subsistence" are enumerated, with other expenditures, to be made out of the sum to be paid the Cherokees for their lands and possessions east of the Mississippi river. This stipulation is again cancelled by the 3d supplementary article; and I will now estimate the sum required to remove the Cherokees, according to *its* provisions. It says the "sum of \$600,000 shall be applied according to the provisions of the treaty;" and the 8th article limits the expenses of removal to \$20 *per head*. I do not know the exact number of Cherokees removed under this treaty, but, estimating the whole number of the Cherokee nation (east and west) at 24,000, and taking the number of Eastern Cherokees, as agreed upon in the convention with Mr. Calhoun, Secretary of War, in 1819, at *two-thirds* of the whole nation, there would be *sixteen thousand* to remove under the provisions of the treaty of 1835. This number, at \$20 per head, would amount to \$320,000; leaving a balance of \$280,000 to be applied for the other objects contemplated by the 3d supplementary article. Under my construction of the treaty, and the only rational construction I have ever heard given to it, the duty of the Government then was to ascertain the amount of "*all claims, of every nature and description*, [held by the Cherokee people] *against the Government of the United States, not HEREIN otherwise expressly provided for*," &c., according to the *words of the third article*; and, if the balance of the \$600,000 was insufficient to liquidate them, then to make a *pro rata* division among the several claimants. The United States would then have fully and faithfully executed the treaty in this respect, and could be held liable for nothing more under its provisions, on account of the removal of the Cherokees to the country west, or for the payment of their claims, of "*every nature or description.*" This would have left the *five millions of dollars* to be distributed *per capita* among the Cherokee people, agreeably to their expectations, after deducting \$500,000 to be paid for an additional tract of land, under the 2d article, and the several provisions of the 10th article of the treaty, not provided for by the 3d supplementary article. Instead of executing the treaty upon this principle, however, the Government not only consumed the whole sum of \$600,000 in removing the Indians, but drew largely upon the money to be paid them for their *eastern lands and possessions*. And commissioners and valuing agents, and a number of other special agents and contractors, were appointed to carry the treaty into effect, upon whose awards and for whose expenses nearly the whole sum of *five millions of dollars* have been expended, besides *upwards of a million* in addition appropriated upon a requisition of the Secretary of War, in 1838. Mr. Ross himself drew

nearly one million four hundred thousand dollars, on account of removals, as I have understood, besides upwards of \$20,000 for his abandoned improvements, although he did not recognise the treaty. The valuing agents and commissioners, as I have understood, returned abandoned improvements to the amount of about \$2,000,000. Upon this subject, however, and the *cause of the commissioners relinquishing their labors before completion*, the committee can receive accurate information at the Indian Office. The Cherokees yet claim, for abandoned improvements and spoiliations of different kinds, *several millions of dollars*.

2d. In reply to your second interrogatory, I can say that I have no distinct recollection of any particular conversation I ever had with Mr. Ross, upon the subject of the claim preferred by him against the United States for removing the Cherokees. I have frequently heard him speak of his difficulties with the War Department under Mr. Van Buren's administration, and always understood that he refused to recognise the New Echota treaty of 1835, and consequently *that he did not claim under that treaty*; hence he must have charged his account, for removing the Cherokees, to the *United States*, and not to the *Cherokee nation*, in the first instance. But I only presume this, for the reasons I have stated. I did not see his account, and do not know whether he *changed its character* after Mr. Bell was appointed Secretary of War. I was at Mr. Ross's house at Tahlequah, Cherokee nation, I think on the 29th of December last. He had but recently returned from Washington, with the money received upon the removal contract, and was busily engaged in paying off those who appeared to be sub-contractors for furnishing provisions, transportation, drivers, &c. There were a great many people about and in the house while I was there, and all the payments were made by Mr. Ross himself; but whether as *principal chief* or *principal contractor*, I do not know. It appeared to be an arduous and responsible undertaking, and the report there was, that his brother and others of his relations divided the profits of the contract. The money paid out, as far as I saw, was in Treasury notes, upon which *interest was charged*; and, except in this, I never heard the least complaint against the settlement and payment, made by Mr. Ross, of the various accounts presented under the contract.

3d. I know the Cherokees have preferred claims, to the amount of *several millions of dollars*, against the United States, through a delegation now in this city, headed by Mr. Ross; at least, such claims have been collected in the Cherokee nation, generally by clerks appointed by the principal chief; and the delegation came to the seat of Government for the purpose of negotiating a treaty providing for their payment. These delegates obtained full power from the national legislature to settle the claims with the United States, receive the money, and distribute it among the Cherokee claimants. The Government of the United States was not to have any thing to do with the adjudication or payment of the claims, except to provide the means, which were to be *placed in the hands and at the disposal of Mr. Ross*. Whether the large payments made to Ross and others, out of their national fund, had any influence in inducing the Cherokees to prefer their claims against the United States, I do not know. I do know, however, that the Cherokees have manifested much anxiety about their *per capita*, or head-right money, as they call it, for the last two or three years. They wanted to know what had become of the *five millions of dollars*, of

which they had been kept in profound ignorance until very recently. A short time before Mr. Ross reached the nation, on his return from Washington, last fall, the national legislature, convened by Mr. Vann, second chief of the nation, passed an act directing that the balance of the money provided by the treaty of 1835 should be ascertained, and immediately divided among the Cherokee people, as contemplated by that treaty. This is the best evidence that can be adduced to show that the Cherokee people did not intend that any claims they had to prefer should *be paid out of their national fund*; and, as a matter of course, their payment depended on *a new arrangement with the United States*, and not upon any existing treaty stipulation.

When Mr. Ross reached the nation, he immediately resumed his duties as principal chief, and, after a fierce contest of several days in the legislature, that body suspended the operation of the act, which had just become a law, providing for an equal distribution of the national fund, supposed to exist under the treaty of 1835, among the Cherokee people. This occurred about the last of November or beginning of December last. I reached the Cherokee nation about the time the repealing or suspension act was under discussion, but was not present at the council ground during the sitting of the legislature. The Cherokees were quieted on the subject of their *head-right* money by the presentation of a letter from the President of the United States, addressed to John Ross and others, which was publicly read in council, and afterwards published in the newspapers of Arkansas. This letter I think is dated September 20th, 1841. It breathes the greatest kindness for the Cherokees, promises that all their grievances shall be redressed, and all their claims satisfied to the fullest extent, and was evidently written in response to some appeal of the delegation, and under the conviction that the Cherokees were tottering under a burden of oppression, and suffering the most grievous wrong inflicted by the Government of the United States. This letter at once silenced the clamor about *head-right* money; for, instead of receiving a few thousands under such distribution, they were induced to expect as many millions under the new treaty promised by the President and their principal chief. I do not mean to say that the President was not governed by the purest and best motives in writing that letter, but it has been used for evil purposes, and been productive of much harm, by raising expectations which cannot be realized.

4th. In reply to the first part of your fourth interrogatory, I can only give my opinion, founded upon information received in the Cherokee nation, that they have been induced to prefer their claims, at the present time, by the favorable settlement of Mr. Ross's claim, and the encouraging letter of the President, above referred to. Of the *nature and foundation* of these claims, I have an accurate knowledge. I was associated with Gov. Butler, Cherokee agent, in their examination, by the War Department, and was engaged upon this duty a greater part of last winter. There are eight districts in the nation, and we had completed the investigation in two, and made considerable progress in the third, when our proceedings were arrested by an order from the Indian Office here. Mr. Ross then proceeded with his own clerks, *as he originally intended*, and collected the claims in all the other districts; and *upon this adjudication* he now claims payment from the United States.

Gov. Butler and myself completed the examination of *one hundred and*

fifty claims. We had no instructions prescribing the mode of examination, but adopted the plan of first examining the claimant, and then one, two, and sometimes three witnesses, according to the character of the claim. Some claims, of every "nature and description" known in the nation, were brought before us, and I had thus an opportunity of becoming acquainted with the true character of the whole. The largest portion of them were for losses sustained by emigrating under the treaty of 1835, but a number claimed for losses in the destruction of property during the old Creek war, near *thirty years ago*, by United States troops, when passing through the Cherokee country. Other claims were put in for property taken by white people anterior to General Jackson's treaty of 1817, which made the first provision for the payment of claims arising under the emigration to the new country west of the Mississippi. The next claimants are the Western Cherokees, for improvements abandoned and stock lost by emigrating under the treaty of 1817, and Secretary Barbour's treaty of 1828, from their lands in Arkansas to the present Cherokee country; and the last and largest claimants, as I have stated, are those claiming under the treaty of 1835, and those *who do not recognise the treaty*, but were forcibly removed under its provisions. My own opinion is, that besides being unsafe to open a door to claimants for losses sustained prior to the treaty of 1817, the Government has no power to do so, unless authorized by an act of Congress or a new treaty arrangement, made to embrace some cases of oppression heretofore overlooked. The 5th article of the treaty concluded with the Cherokees, at the city of Washington, on the 2d March, 1816, makes provision to indemnify individuals of the nation for losses sustained in consequence of the march of United States troops through their country, and says *these losses have been ascertained, by agents of the United States, to amount to twenty-five thousand dollars.*" This, therefore, is a settlement in full for all losses sustained by depredations committed by troops of the United States, either during the Creek war or at other times.

A great many claims were presented by emigrants, under the treaty of July 8, 1817, generally for improvements abandoned when they removed west. The 6th and 7th articles of that treaty provide payment for these improvements. The 6th article says: "The United States do also bind themselves to give to all the poor warriors who may remove to the western side of the Mississippi river one rifle gun and ammunition, one blanket, and one brass kettle, or, in lieu of a brass kettle, a beaver trap, which is to be considered *as a full compensation for the improvements which they may leave, &c.*; and to those emigrants whose improvements *add real value to their lands*, the United States agree to pay a full valuation for the same, which is to be ascertained by a commissioner appointed by the President of the United States for that purpose, and paid for as soon after the ratification of this treaty as practicable." As twenty-five years have elapsed since the ratification of this treaty, and large payments have been made under it, it is fair to presume that these stipulations have been carried into effect. These claims, in very few instances, were presented by the *original claimant*; they were generally brought forward by some one claiming as an heir, who knew little if any thing about the matter. I have one claim of this kind now before me, which will give the committee some idea of them. It was presented by a Cherokee, who claimed for his father, *Ka-sah-he-lee*, [meaning one stooped down.] Upon examining

the claimant, I found he was not more than *five* or *six* years old when his father emigrated. The claim presented was thus set forth: "For an improvement abandoned by 'Ka-sah-he-lee,' on the north side of Hiwassee river, in the State of Tennessee, from whence he emigrated in 1818;" and the value put upon the improvement, in the account preferred, was five hundred and eight dollars. The claimant brought forward a witness, (his sister,) who testified to the existence of the improvement; but when I questioned her on the subject of her step-father receiving the articles mentioned in the 6th article of the treaty of 1817, she replied: "Yes, he *received a rifle and blanket*; do not recollect whether he got a brass kettle or beaver trap; *received them at the agency, (Colonel Miags's office.)*" This testimony clearly proved that the improvement abandoned was considered by the United States and Cherokee emigrant, *at the time of emigration*, as one coming under the 6th article of the treaty of 1817. A great portion of this class of claims, which came before us, were found to be settled in the same way. There are some, however, who did not avail themselves of the provisions of the 6th or 7th articles of the treaty; and I believe there are a few who did not even receive any thing from the United States for the expenses of their removal, or for the year's subsistence after they arrived in their new country; which was caused either by the ignorance of the emigrants, or by the neglect, or something worse, of the Government agents. These claims ought to have been investigated and settled long ago, as the early settlers in the West endured hardships and privations which were unknown to the late emigrants. There is another class of claims, under the treaty of 1817, which require immediate attention; I mean the *reservations* under the 8th article. A great number of these have been paid for, at various times, by the United States, and I have reason to believe some of them improperly. But still there are cases of extreme oppression, which should be inquired into; they are those who have lost their lands by the proviso in the 8th article, "*That if any of the heads of families, for whom reservations may be made, should remove therefrom, then, in that case, the right to revert to the United States.*" A great many have lost their reservations under this proviso, the heads of families having removed therefrom. The only question in such cases is, "Was the removal from the reservation the *voluntary* act of the Indian in whose name it was registered, or was it produced by any act or acts of oppression committed by the Government or citizens of the United States, or by the Government of any State?" We examined some cases where the proof was conclusive that the removal of the reservee was affected by the grossest outrages perpetrated by white men, calling themselves citizens of the United States, upon the occupant or reservee, who was uneducated, helpless, and without any legal adviser. Such cases cannot be called an *abandonment of a reservation*, which should make it revert to the United States under the treaty. I have thus briefly brought these cases before the committee, to show the great care and attention necessary in the examination of claims of this description, to do justice to the honest claimant on the one side, and protect the Government from gross imposition on the other.

The next class of claims embrace those for improvements abandoned and stock lost by removing from Arkansas to the present Cherokee country, under Secretary Barbour, May 6, 1828. These claims are provided for in the 4th and 5th articles of that treaty, under which commissioners and agents were appointed by the United States, who acted in conjunction

with a *Cherokee committee*, selected by the nation to collect and value the stock and other property lost by the Indians in consequence of their removal. A much larger amount of money has been paid for these losses by the Government than was contemplated by the treaty; and if it was improperly divided among the claimants, or any have been omitted, it was the fault of the agents appointed to execute the treaty. There were a number of claims presented to us under this treaty, and the claimants stated, under oath, that they had never been paid. Yet, in a great many instances, I discover that the same claim had been allowed and paid, *only for a less amount*; and, in some instances, another person than the present claimant had originally presented the claim and received the money. The settlement of these claims now, therefore, also requires the greatest caution; and it is necessary for those examining them to have all the records of the old agents and commissioners, exhibiting the names of the claimants, and the species of property claimed for, with the amount allowed or rejected. Even with this precaution, it requires the greatest vigilance to detect imposition, if it is intended, unless the first commissioners were careful to identify the Indian by his *Indian* and *English* name, his particular location, &c., as there are scarcely two persons who spell Indian names alike. There are also a number of claims now preferred or about to be preferred under the 8th article of the treaty of 1828, which, if carried down to the late emigrants, would swell their claims to an enormous amount. But this stipulation was evidently suspended in its operation by the treaty at Fort Gibson, in February, 1833; and I have seen the decision of the Commissioner of Indian Affairs, made in January, 1838, which decrees "that the bounty of \$50 for every five persons emigrated under the treaty of 1828 does not apply to removals under the treaty of 1835."

The last and largest claimants are those who removed west since the treaty of 1835; they may be safely estimated as amounting to nine-tenths of the whole sum claimed. Claimants in nearly all the cases presented to us had their accounts prepared by one of the clerks appointed by Mr. Ross to be present during our investigation, or by an attorney employed for the purpose. Those who removed under Mr. Ross's arrangement generally had their accounts headed thus: "For property abandoned and lost, by being suddenly forced to remove by the United States troops in the year 1838, from the old nation, &c." Under this imposing head charges were made, in many instances, *as appears by the testimony of the claimant*, for property supposed to be destroyed by the United States troops during the old Creek war, as far back as 1813, and for other depredations committed (as claimant believed) by white people at various times, from that period up to the emigration in 1838. The danger of promising a *general* remuneration for all losses sustained by these people was here manifest. Almost the whole of the late emigrants, beyond childhood, appeared to have claims. A husband and wife preferred claims *separately*, at different times, evidently for the same property; and as the connexion did not appear from the *name*, (they having different Indian names,) it was necessary in all cases to ask a great many questions, to find out the proper name, family connexion, particular location in the old nation and in the present one, and the general condition of the claimant. One instance I recollect of a husband and his two wives claiming for the same property, at different times, and whilst we held council in different districts. In one case, two-

brothers, apparently not more than 19 or 20 years of age, brought forward their claims for improvements abandoned and property lost in the old nation, by emigrating in 1838. One presented his claim to Governor Butler, and the other to me; they had entirely different names, and yet we discovered, by ascertaining that they were brothers, that they *claimed for the same property*, if they had any at all to claim for. In most cases, when husband and wife were living together, even they preferred separate claims, alleging as a reason that it was a custom to hold property separately; and in some cases, when one of the parties, say a husband, was under examination upon his claim, on being asked "whether his wife had a claim also," he would reply, that *he did not know*, and persist in avowing his ignorance, although the wife was present, and aiding him with his claim! These attempts at imposition were practised by the uneducated Cherokees, who did not speak our language, and who were interrogated and gave their answers through an interpreter. The same temptations held out to a community of white people, uneducated and ignorant of the nature or obligations of an oath, might produce a similar effect.

Having thus brought to the attention of the committee the character of some of the claimants, I will endeavor to show the "foundation of the claims" presented by emigrants since the treaty of 1835. A great many of those who recognised that treaty, and peaceably removed under its provisions prior to the expiration of the two years allowed for that purpose by the 16th article, are still claiming for improvements which they allege have not been valued and paid for, and for horses, cattle and hogs, poultry, household furniture, and farming utensils, which they could not dispose of when ready to emigrate, nor take with them, and for property lost on the road when emigrating. The great mass of heavy claimants are those who claim for improvements, household furniture, farming utensils, stock of every description, and grain in the ground, abandoned and lost by being suddenly forced to remove in 1838 and 1839, under orders of the United States Government; and in some cases heavy damages are claimed for false imprisonment. As respects the abandoned improvements thus claimed for, judging from the cases which came under our observation, there will be very few, upon strict examination, that can be called *just claims*, or claims at all, either against the United States or the Cherokee national fund. Nearly every case of this character which came under my observation, I found, upon examination, to be for *an improvement made AFTER claimant had one valued under the treaty of 1835!* In some cases it was made just "*outside of the enclosure of the old improvement*," and in many instances the claimant acknowledged that "*he made it for the purpose of establishing another claim, after he had enrolled for emigration!*" And, in a great many other instances, claimants alleged as a reason for making another improvement, *after they were already paid for one under the treaty*, with the express understanding that they must emigrate, *that they were told by the chief* (Mr. Ross) *and others that they could still remain in the old nation*. In other cases, an improvement was claimed for by persons who said they owned it when they emigrated, but who never occupied it, and who had been actually paid for the improvement they abandoned when they removed west. I will quote a sentence from the testimony I took in a claim now before me. The claimant is a Cherokee woman, *who emigrated in Captain Benge's detachment, in 1838*; she claims for an improvement abandoned and property destroyed in the year 1813, \$740, and

for an improvement abandoned and stock and household property left when *forced to remove*, in 1838, \$364 25. In tracing her removal from 1813 to the place claimed for as being abandoned in 1838, she acknowledges that this improvement was made *after* the treaty of 1835, thus: "No; did not remove to this place from improvement abandoned in 1813; settled on another place, where we lived *at and after treaty of 1835*; that *was valued to my husband!* The last place (now claimed for) *was just outside of enclosure of place for which my husband was paid!* Reason we left this place *before emigrating* was because white people took possession after agents valued it. Yes; *expected to remove to this country when we made the improvement now claimed for!*" Upon the "foundation" here described does a large portion at least of the improvement claims rest; and surely they are no claims, in law or equity, which the United States or the Cherokee nation are bound to pay. The claims for personal property charged as having been lost by being *forcibly removed* also require the closest investigation. A great many of the horses, cattle, and other property, for which payment is claimed under this head, will be found to have been lost (supposed stolen) years before emigrating, and a great deal taken by white people for debts claimed of the Cherokees. The largest claim for personal property is one made by *James Spencer*, who emigrated under Mr. Ross's arrangement, in 1838. His claim is for \$5,087 25! The first three items are charged as follows:

One wagon and team of five horses, with harness complete	-	\$750
One wagon and team of four oxen	- - -	310
One two-horse carriage, one barouche, one pair match horses, and one single horse	- - - - -	1,250
		<hr/>
		2,310
		<hr/>

In his examination upon this claim, Mr. Spencer says he lived in Creek Path, within a few miles of Gunter's landing, and the teams and carriages above stated were taken from his agent, employed to convey them, with his family, to the agency, to join Richard Taylor's detachment, then ready to emigrate. He says he bought the wagons, horses, and oxen, to be employed in the removal under Mr. Ross's arrangement, and that they *were on the list of emigrating wagons*. It appeared, upon investigation, that his property was in charge of a Mr. *Hugh Henry*, to convey it and his family to the agency, and about ten miles from his house the property was stopped by an officer, (*sheriff or constable*,) who levied upon the whole of it. Henry went security for the property, as Spencer alleges, and afterwards got all the accounts in his hands, and retained it. He took it home to his house, within two miles of Jack Ross's landing, and claimant never got it back again. Mr. Spencer says he applied to the chief, John Ross, and others, but could obtain no redress; that Captain John Drew and Major Fields (two of the most intelligent Cherokees in the country, who had charge of the detachment with which Spencer's family afterwards removed,) had advised him not to return back to look after his property; that he would get into trouble, and perhaps be put to jail. From this and other facts disclosed in evidence, it appears very plain that the property was taken to satisfy debts, under the law of Alabama, and could not be a just claim against the United States, under any stipulation of the treaty of 1835, unless the Government was bound, by some *private ar-*

rangement, to protect the property of emigrants from arrest and seizure under process of law. The testimony, however, (which is all adduced by claimant,) shows that he suffered great loss by the seizure of his teams and other property, at the particular time it was taken; and, as the names of the parties who he charges with having inflicted the injury are known, the case deserves to be inquired into.

As Spencer's account is a very large one, I will enumerate a few more items. One charge is, "*for cash in money taken by white men out of trunks, after being put in removing wagons, \$744!*" This alleged theft is not proven. Spencer and his daughter swear that it was put into a trunk, and the trunk put into one of the wagons, in charge of Hugh Henry, and that the money was lost, but cannot tell how. Another item in the account is "*for a fine lever watch, \$60!*" In his testimony, Spencer swears he left this lever watch in the hands of *David Spencer*, to get repaired; David walked off with it, and claimant never got it again, *and charges its loss to the Government of the United States!* A great many articles charged in the account were shown by the testimony to have been loaned to neighbors, and not returned, and stolen *by white people*, but when, or by whom, the witnesses could not tell. There are also claims in this account for *two abandoned improvements*, amounting to upwards of \$1,000 and yet, in his testimony, Mr. Spencer thus acknowledges payment, in reply to the question on that point: "Yes, I have received money from Government for spoliations and improvements. I received upwards of \$600 in 1838 for the loss of cattle and hogs! I received something over one thousand three hundred dollars *for the improvements I abandoned when coming here!*" Here, then, the claimant was paid for the improvement *he abandoned when he emigrated*, and the treaty stipulation was complied with.

I have thus endeavored to place before the committee the nature and foundation of the claims now preferred by the Cherokees against the United States, and I have no hesitation in saying that it would be unsafe to pay them, upon an *ex parte* examination, such as has been made by clerks appointed by the principal chief. Indeed, the amount presented in this way will be so great as to cast a suspicion over the whole, and the just and honest claim will suffer with those that are fraudulent. That certain Cherokees have just claims to a large amount, for losses sustained in removal west there is no doubt. The limited investigation made by Governor Butler and myself exhibits cases of extreme hardship and oppression, inflicted by the Government and citizens of the United States, especially upon the ignorant portion of these people. But then, again, a great proportion of their claims and grievances are imaginary; they had talked about them with bad counsellors so long that they believed them real; and most of those who came before us, of this description, appeared relieved and satisfied, after they had their tale attentively listened to, and were shown that they had no grounds of complaint under any treaty stipulation. Nothing but the most patient and laborious investigation, therefore, can put aside claims that have no foundation, and secure the payment of those that are really meritorious. Those appointed to finally adjudicate and award upon these claimss should personally examine each claimant and witness, so that they could judge of the *character of the parties* as well as of the claim, and *not* make an award from a *register of claims* collected by others. They should also have before them the rolls or records of all payments made to Cherokee claimants under every treaty stipulation now existing, as well as

the claims heretofore rejected, with the reasons assigned for their rejection. Justice, humanity, and sound policy, require that this investigation should be instituted as speedily as possible, *if the Government decides to appropriate money for the payment of the unsettled claims.*

I have stated that *upwards of six millions of dollars* have already been expended in the removal of Cherokees and payment of claims under the treaty of 1835. In this I omitted to mention the amount received from the sales of Cherokee property, which was collected after the owners were forcibly taken from their homes by the United States troops in 1838. The great mass of the claims are made up for property left in this way, and the Cherokees were promised that it should be collected and sold, by Government agents, for their benefit. If this had been done, under judicious management, it would have gone far to aid in the liquidation of those claims; and the inquiry of *what has been done with this property, consisting of valuable stock of all kinds, household furniture, farming utensils, and grain in the crib and in the ground*, is worthy the serious consideration of the committee.

With the nature and foundation of the claims of the remnant of Cherokees yet residing east of the Mississippi I am not so well acquainted. They are generally, I believe, for losses sustained by leaving their homes and escaping to the mountains, to avoid being removed west by the United States troops in 1838. These claims, however, cannot be paid out of any fund provided by the treaty of 1835, nor can their claims be settled under that treaty. The 12th article, so far as it gives them certain rights, and confers equal benefits with the other Indians, is repealed by the supplement to the treaty concluded March 1, 1836. The preamble to these supplementary articles has this clause: "Whereas the President of the United States has expressed his determination not to allow any *pre-emptions* or *reservations*, his desire being that *the whole Cherokee people should remove together, and establish themselves in the country provided for them west of the Mississippi river.*" And the 1st article then repeals as follows: "Art. 1. It is therefore agreed that all the pre-emption rights and reservations provided for in articles twelve and thirteen shall be, and are hereby, relinquished and declared void."

These supplementary articles were ratified by the Senate as part of the New Echota treaty, and, under the article I have cited, I cannot perceive how the Cherokees who have not removed west can have their claims adjudicated and paid under that treaty. But if these people are now willing to remove and join their brethren in the West, the object may be considered of so much importance to the United States, to the State of North Carolina, and to the welfare of the Indians, as to induce the negotiation of a new treaty with them, by which all their claims may be paid by the United States.

In concluding this reply to the interrogatories of the honorable committee, I beg leave to call their attention to a memorial signed by a delegation of Western Cherokees, dated April 16, 1842, addressed to the President of the United States, and on file in the War Department. This memorial presents the "Western Cherokees" as a separate and distinct people from the "Eastern Cherokees," who emigrated under the treaty of 1835, and claims the country now occupied by the whole nation, under that treaty, as being the exclusive property of the Western Cherokees, as ceded and guarantied to them by the treaties of 1828 and 1833. The memorialists

also protest against any treaty being made by the United States with *John Ross*, in any wise affecting the jurisdiction over the Cherokee country west of the Mississippi. To the principles set forth in this memorial I believe they will adhere, at the peril of their lives.

S. C. STAMBAUGH.

Sworn and subscribed before me,

JAMES COOPER,
Chairman of the Committee.

Testimony of R. E. Clements.

Question. Did you furnish rations or provisions to the Cherokee Indians during the summer of 1838? If ay, of what kind and for what period?

Answer. That he furnished fresh beef to the Cherokee Indians, beginning on the 4th day of July, 1838, and ending on or about the 6th day of November of the same year.

Question. What portion of the tribe was furnished by you? The whole, or only a part? If the latter, what portion was supplied by you?

Answer. Provisions were furnished by Clements, Bryan, & Co., at all the different places of rendezvous, and, as was understood, for all the Indians, until the 29th of August, or thereabouts, when one party, estimated at about one thousand, were turned over to John Ross, for the purpose of starting on their emigration. On or about the 3d day of September, another party was turned over to John Ross, for the same purpose; and then, at the expiration of about every ten days, John Ross applied for a party, and it was turned over to him, until all were turned over to him. The whole of the nation were furnished with beef by Clements, Bryan, & Co., for a while, and a portion for a while, as above stated.

Question. Were there any other person or persons engaged, during the period referred to, in furnishing supplies to the Cherokees? If ay, state who they were and what kind of provisions they furnished.

Answer. That, during the time that the Indians were fed with beef furnished by Clements, Bryan, & Co., the balance of the rations was furnished by the Government agents, Capt. John Page, U. S. army, and General Nat. Smith. They furnished corn meal, flour, salt, &c., and bacon when required.

Question. Was Lewis Ross engaged, during the same period, in furnishing subsistence for the Cherokees? If ay, state what quantity he furnished, and what was the probable value of the same.

Answer. When the parties were turned over to John Ross, as stated in the answer to the second interrogatory, they were then fed by Lewis Ross, the contractor for furnishing rations on the journey west. He cannot state what quantity was furnished by Lewis Ross. The ration consisted of one pound of beef, one pint and a half of corn meal, four quarts of salt to every one hundred rations, and a small quantity of sugar and coffee, and a little soap. He states that beef could have been bought at about four cents per pound.

Question. With whom did you make the contract for furnishing the Cherokees? State what your contract was, whether your account has been settled, how much you have been paid, by whom paid, and out of what fund.

Answer. That Clements, Bryan, & Co., made their contract for furnishing beef for the Cherokees at their camps, and before they were started west, with Capt. John Page, United States army. Six and a half cents a pound was the price agreed by Capt. Page to be paid to Clements, Bryan, & Co., for the beef. The sum of \$58,000 and upwards (the precise amount not recollected) was paid to Clements, Bryan, & Co., by Capt. Page, out of money sent him to defray the expenses of the emigration. To what fund it was charged witness does not know.

Question. Is any part of your claim, arising under the contract for furnishing the Cherokees with supplies, unpaid? If ay, what sum remains unpaid, and why has it not been paid? State the reason.

Answer. Clements, Bryan, & Co., made two contracts with the Government. The one to which allusion has been made above was carried out in full, and they have received payment in full. Of the other it is presumed that it is not necessary to speak, as it is not supposed to be embraced in the interrogatory.

Question. What caused the delay in the movements of the several detachments of Indians from the east to the west, and how long was such delay continued?

Answer. The emigration was to have been commenced on the 18th June, 1838. Gen. Scott suspended it until the 1st of September, and then again it was suspended by him, as was understood, until further orders. Two parties started about the 1st of September, but they did not go over twenty or twenty-five miles when they were stopped. These two parties, as well as he remembers, resumed their journey about the 1st of October, and then there were other parties started at short intervals, until they were all on the route.

Question. Who purchased the wagons and teams for the removal of the Cherokees? Out of what fund were they paid for? What was the number of them? What was the value of each?

Answer. That he has understood and believes that they were purchased by Messrs. Tharpe and Parks, the agents of John Ross. They were paid for with the money turned over to John Ross by Capt. Page, under the orders of Gen. Scott. There was a wagon and team allotted to every twenty emigrants. He thinks there were a few hired wagons belonging to Cherokees; the rest were purchased. They varied in value from \$500 to \$1,000.

Question. State any thing within your knowledge, pertinent to the subject of the removal of the Cherokees, which relates to the probable cost of such removal, &c.

Answer. That when a party was turned over to John Ross, which had been fed by Clements, Bryan, & Co., they were usually removed to a short distance, say three or four miles, when they were encamped, and then Lewis Ross commenced issuing rations, under his contract for subsisting the emigrants. Witness states that he considers the price paid to John Ross, agreeably to his contract, as having been exceedingly extravagant. There were persons on the ground every way able and competent to carry out the contract, who would have taken it for less than one-half the amount agreed to be paid to John Ross. No competition was allowed; and, after the contract was made with John Ross, application was made to have a contract for subsistence let to the lowest bidder, but he refused. And further saith not.

R. E. CLEMENTS.

Sworn and subscribed before me, August 6, 1842.

JAMES COOPER, *Chairman Committee.*

Testimony of Gideon F. Morris.

Question 1. Were you at the Cherokee agency, in the State of Tennessee, in 1838, when the contract for the removal of the Cherokees was concluded? If ay, state who contracted for the removal, and all you know about it.

Answer. I was frequently at the Cherokee agency, in the State of Tennessee, in the year 1838, and presume I was there at the time the contract was made, though I cannot state positively that I was there at the particular time that it was made. I was back and forth constantly, from the time the Indians were assembled in camp until their emigration. I understood that General Scott made a contract with John Ross & Co., for the removal of the Cherokees. The Ross party got permission from General Scott to hold a council, and they appointed a committee, of whom John Ross was one, to make a contract for the removal of the Indians. I do not now remember who composed the committee, but John Ross told me that it consisted of the delegation who were with him at Washington in 1838.

Question 2. Out of what fund were the wagons and teams employed in the removal of the Cherokees paid for? Were they considered the property of the Cherokee nation? Were they marked as such? If yea, state how they were marked, and whether you have ever heard John Ross, or others interested in the contract, admit that the said wagons and teams were the property of the Cherokee nation. State fully all that was said.

Answer. I know that a portion of the wagons and teams employed in the removal of the Cherokees were bought for the special purpose of being thus used; and I have always understood that they were paid for out of the money advanced to John Ross & Co. by the orders of General Scott. The horses were branded C. N., and I think the wagons were also. I made inquiry why they were thus marked, and was informed it was because they belonged to the Cherokee nation.

Question 3. How many wagons and teams were there, how many horses in each, and what would have been a fair average price for each?

Answer. I cannot state how many wagons and teams were purchased by John Ross & Co. I know there were some very choice teams purchased, and my opinion is that they could not have been bought for less than an average price of six hundred dollars.

Question 4. Why were the teams purchased, rather than hired, as stipulated in the treaty?

Answer. John Ross told me that the council determined to purchase the wagons and teams, so that they might be subject entirely to their control; that it was feared that, if they hired them, the owners might become dissatisfied, and leave them, and produce difficulty and delay and embarrassment in the emigration.

Question 5. Did John Ross, or any of his partners in the contract, ever mention the reasons why the teams were purchased, rather than hired? If yea, state what they were.

Answer. I have fully answered this interrogatory in my answer to the fourth question.

Question 6. Do you know whether John Ross charged the Cherokee nation, or the United States, with hire for these wagons and teams? If

yea, how much per diem for going west, and how much for returning east?

Answer. I have understood that five dollars per day, for each team, was charged while going west, and seven dollars for every twenty miles returning east.

Question 7. Did any of the wagons and teams ever return to the east?

Answer. None of the wagons and teams were ever brought back, to my knowledge.

Question 8. Have you ever heard John Ross, or partners, state what disposition was made of the wagons and teams? If yea, state what it was, and all the particulars.

Answer. John Ross told me that, on their arrival west, the wagons and teams were set up and sold to the highest bidder, on a credit; and that the notes were unpaid, but, when paid, the money was to be subject to the disposal of the national council.

Question 9. Was there a steamboat employed in the removal, out of what fund was it paid for, and what disposition was made of it?

Answer. I have understood that the last detachment went off in a steamboat; but I do not know by whom it was bought, or out of what fund paid for, nor what disposition was made of it.

Question 10. Had you any conversation with John Ross, while in this city in 1841, or since, in relation to the claim which he was then pressing? If yea, state against whom the claim was made, for what it was made, and the particulars of the conversation referred to.

Answer. I have had different conversations with John Ross, relative to the claim which was allowed him in 1841. I understood that the claim was one against the United States; and for services rendered in removing the Cherokees west of the Mississippi.

Question 11. Did he (Ross) state that the claim was one against the United States, and that he did not intend it to be a charge upon the Cherokee fund?

Answer. I have heard John Ross say that his claim was against the United States, and that it was not to come out of the Cherokee fund; I have heard others of the delegation (Mr. Bengé and Mr. Vann) say the same thing—that Ross claimed it from the United States, and not out of the Cherokee fund.

Question 12. Did not Ross and his party always deny the validity of the treaty of 1835, and have they not refused to recognise it, and do they not do so still?

Answer. Mr. Ross and his party have, in all their conversations with me, uniformly denied the validity of the treaty of 1835, and refused to recognise it.

Question 13. Out of what fund was this claim finally paid? Was it out of the Cherokee fund, and why?

Answer. I have always understood that the claim was paid out of the Cherokee fund.

Question 14. Do you know what disposition was made by Ross of the amount received in satisfaction of said claim? Have you received from Ross any information on said subject? If yea, state fully all that you know or have heard from him on the subject.

Answer. I know nothing about the disposition of said money; except what Mr. Ross told me. I heard Mr. Ross say that, when he went home,

he notified all persons having claims for services rendered in the emigration to come forward and receive their pay; that many claims were presented and paid, for which he had vouchers; that there were still some demands unpaid; that there was, however, money enough left to pay them; and that he could show that he had never received a dollar for his own services.

Question 15 Have you ever seen a letter from the honorable John Bell, late Secretary of War, to John Ross? If yea, state the contents of said letter; also, all that you know on the subject.

Answer. Some time in the fall of 1841 I was at the house of M. St. Clair Clarke, Esq., and Mr. Clarke stated that he had a letter from the honorable John Bell to John Ross. I think Mr. Clarke read a portion of the letter to me and Mr. Hinart, who was also present. I understood the letter as urging upon Mr. Ross the propriety of being liberal in his allowance to Mr. Clarke, who, Mr. Bell stated, had rendered him very important services.

Question 16. Did you ever hear Thomas H. Hindman, one of the partners of Lewis Ross, say how much money he received for his interest in the contract of Lewis Ross? If yea, state what it was.

Answer. I had a conversation with Thomas H. Hindman, after Ross & Co.'s claim was paid, and asked him (Hindman) how much he got for his services, or interest in the contract. He replied that he got forty-four thousand dollars, and then said he did not get a fair dividend.

G. F. MORRIS.

Sworn and subscribed before me,

JAMES COOPER,
Chairman of the Committee.

Testimony of Garry Hinant.

Question 1. Were you at the Cherokee agency when the contract was entered into by John Ross for the removal of the Cherokees?

Answer. I was not there.

Question 2. Were you in the Cherokee nation (west) when the detachments removed by John Ross reached their destination? If yea, state what disposition was made of the wagons and teams which were used in removing the Indians; also, whether John Ross made a charge for the use of the said wagons and teams; and if so, how much did he charge *per diem*? State, particularly, all you know on the subject.

Answer. I was. Some were sold; do not know what disposition was made of the proceeds of said sale; some were disposed of in payment to persons who were employed by John Ross & Co., or the contractors for removing the Cherokees; some were left undisposed of; do not know whether they have been disposed of since or not; the distance is about 800 miles; never heard of said wagons or teams returning; saw some of the wagons and teams sold, but do not know what disposition was made of the money.

Question 3. Have you ever had any conversation with John Ross about his claim? If ay, state out of what fund he claimed to be paid, and what he said on the subject.

Answer. I have had conversations with the Cherokee delegation, and perhaps with Ross, on the subject of their or his claim, who said it was a claim against the United States generally, and not payable out of the Cherokee fund appropriated under the treaty of 1835 and 1836. He and they denied the validity of the New Echota treaty; said it was a fraudulent treaty, made without authority; never could recognise it as a treaty, or receive any of the moneys appropriated to carry it into effect.

Question 4. Since the said claim was allowed and paid John Ross, have you seen any letter addressed to John Ross and his brother, or either of them? If ay, state by whom the letter was written, and what were its contents.

Answer. I did not pay particular attention to the letter addressed to Mr Clarke, though read by Mr. Clarke in my presence.

Question 5. Were you a citizen of the Cherokee nation at the time of its removal to the west? If so, were you removed by John Ross, or did you remove yourself?

Answer. I was a citizen of the nation at that time, but was not removed by Ross. I moved myself.

Question 6. How long were you on the route between Alabama and the Cherokee nation west of Arkansas?

Answer. I was fifty-five days.

Question 7. Was the time occupied by you in the journey sufficient for your removal with ease and comfort, allowing necessary delays for rest and refreshment, or were you hurried?

Answer. The time was sufficient for all the purposes mentioned.

Question 8. How much did your removal cost you per head?

Answer. It cost me less than twenty dollars, after starting, but I cannot recollect the precise sum.

Question 9. What was the distance travelled by Mr. Ross with his detachments, and what difference was there between the distance travelled by you and by him?

Answer. The distance was about the same; has always been estimated at 800 miles.

GARRY HINANT.

Sworn and subscribed before me,

JAMES COOPER.

AUGUST 10, 1842.

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WAR DEPARTMENT, *August 18, 1842.*

SIR: In further answer to your letters of the 21st and 27th ultimo, I respectfully transmit herewith, to the Committee on Indian Affairs, a report of the Second Auditor, "showing the amount of moneys paid to the Cherokee nation or their agents, since the treaty of 1835, either under the treaty or in pursuance of acts of Congress, and the objects to which it has been applied."

Very respectfully, your obedient servant,

J. C. SPENCER.

Hon. J. COOPER,
House of Representatives.

TREASURY DEPARTMENT,
Second Auditor's Office, August 18, 1842.

SIR: Herewith I transmit a statement showing the amount of moneys paid to the Cherokee nation or their agents, including delegations, since the treaty of 1835, either under the treaty or in pursuance of acts of Congress, together with the objects to which it has been applied, called for in the letter of the Hon. James Cooper, chairman of the Committee on Indian Affairs, under date of the 27th ultimo. The delay in furnishing this statement has been occasioned by the necessity of examining a great many accounts.

I have the honor to be, respectfully, your obedient servant,

W. B. LEWIS.

HON. JOHN C. SPENCER, *Secretary of War.*

Statement showing the amount of moneys paid to the Cherokee nation or their agents, since the treaty of 1835, either under the treaty or in pursuance of acts of Congress, and the objects to which it has been applied; called for in the letter of the Hon. James Cooper, chairman of the Committee on Indian Affairs, addressed to the Secretary of War on the 27th ultimo, and referred by the Secretary to this office.

1836.—July 18 -	Paid, by requisition No. 7,356, to George Thomas, cashier, per order, due to the Cherokees west, for their annuity for 1836—paid to the delegation in conformity with the instructions of the Cherokee committee and council, in general council assembled, per certificate of Second Comptroller No. 404, (Indian annuities, act June 14, 1836) -	-	\$3,333 33
1837.—March 31	Paid to John Ross, by order of the Cherokee delegation, consisting of John Ross, James Brown, John Benge, George Sanders, Samuel Gunter, Stephen Foreman, and R. Taylor, as follows: Amount of annuity refunded by H. Montgomery, late agent, due Cherokees east -	-	\$309 83
	Amount retained out of annuity, per act of 26th June, 1834, paid to Western Cherokees; refunded out of their proportion, per act of 14th June, 1836 -	-	1,041 67

	Annuity provided for by act of 14th June, 1836, being two-thirds of \$10,000	6,666 67	
	For two-thirds of the sum appropriated by the same act, as interest on annuity	8,400 00	16,418 17
	Paid to William S. Coodey, by order of the Cherokee delegation west, accompanied by the approval of the Commissioner of Indian Affairs, their share of annuity, as provided for by the 4th article of the treaty of July 8, 1817, deducting therefrom \$1,041 66, overpaid them in 1834	-	2,294 67
1838.—June 25 -	Paid to John Ross, by requisition on the Treasury No. 9,992, per order of the Cherokee delegation, viz: John Ross, R. Taylor, Edward Gunter, James Brown, Elijah Hicks, Situakee, and White Path, being an account of arrearages of annuities, and such other purposes as are deemed necessary and proper to facilitate the removal of the Cherokees, for which sum the delegation are to be held accountable—arrears of annuities, per act 12th June, 1838	-	25,000 00
June 26 -	Paid to John Ross, one of a delegation of the Cherokees, consisting of John Ross, Edward Gunter, Richard Taylor, Samuel Gunter, James Brown, Elijah Hicks, Situakee, and White Path, expenses of the delegation to and returning from Washington, under the provisions of the act of 12th June, 1838, making appropriation for preventing and suppressing Indian hostilities, &c., allowed by Commissioner of Indian Affairs and the Secretary of War	-	7,000 00
August 4	Paid to John Ross, principal chief and agent of the Cherokee nation, by Capt. John Page, disbursing agent, on account of removal and subsistence	130,000 00	
Sept. 17 -	Do do do do	134,960 00	
Oct. 16 -	Do do do do	264,960 00	
Nov. 13 -	Do do do do	246,479 04	
			776,399 04

1840.—April 9 -	Paid to Dutch, one of the Cherokee delegation, consisting of Dutch, Alexander Foreman, W. L. Holt, Geo. W. Adair, Moses Smith, James Carey, William Rodgers, and William Thornton, allowed by the Secretary of War, out of commutation money, in lieu of annuity for 1837 - - - - -	-	\$3,432 50
1841.—April 27 -	Paid to David Vann, Treasurer of the Cherokee nation, by William Armstrong, acting superintendent western territory, interest on investment up to 1st January, 1841, as follows:		
	Treasury draft No. 6,868, dated March 30, 1841 - - -	\$8,217 50	
	Do 7,131, dated April 27, 1841 - - -	78,728 00	
	D. Kurtz, check on New York - - -	6,168 54	
	William Armstrong, draft on the Secretary of War - - -	13,206 09	
			106,320 13
August 16	Paid to John Ross and Lewis Ross, on account of carrying into effect treaty with Cherokees, allowed by Secretary of War - - -	-	94,407 38
Sept. 10 -	Paid to John Ross, David Vann, and John Benge, members of the Cherokee delegation, by the Secretary of War, interest on trust fund for six months, ending 30th June, 1841 - - -	-	18,042 84
Sept. 17 -	Paid to John Ross, principal chief and agent of the Cherokee nation, specially authorized by the national council to apply for and receive the same, allowed by the Secretary of War - - -	-	486,939 50
			<hr/> 1,539,587 56

WASHINGTON, D. C., *September 20, 1841.*

GENTLEMEN: You have been at Washington since the 21st of February last, and during the several months that have since elapsed you have been urging upon this Government the consideration of the claims, the wishes, and the grievances of your people. Nor has a deaf ear been turned to your earnest petitions; much attention has been given to the weighty and important subjects which you have urged. You are aware, however, of the great pressure of the affairs of the people of the United States upon my attention, under the peculiar circumstances of their Government; and if all the subjects presented by you, on the part of your people, have not been fully considered and decided, you will be able to satisfy them that it has been from no desire on our part to slight or neglect the wishes or the interests of a nation who have been for so many years the steadfast friends of the United States, and for whose rights and interests this Government feels the strongest concern. So far as it may be in my power to prevent it, you may be assured that it shall not again be said that a Cherokee has petitioned for justice in vain. I have looked over the several treaties that have been made between the Cherokee nation and the United States, and I find there promises of friendship on the one part, and of protection and guardian care on the other; and I now again promise you, and through you your whole people, that the protection and care so promised shall be given. I have read with interest and emotion the solemn address of our first President, the venerated Washington, to the delegation of your nation, recorded in the silver bound book which he presented to you at Philadelphia, as the record of the mutual obligations then existing between this Government and the Cherokee nation; and I have also read the eloquent talk made to you by the illustrious Jefferson, inscribed upon a parchment, surrounded with an endless chain of gold. Let us still keep that chain bright and unbroken. In its preservation consists our mutual happiness.

Solicitous to relieve, as far as practicable, the sufferings of your people, shortly after my accession to the office of President of the United States, I directed the Secretary of War to examine and settle promptly the arrearages due to the nation for the expenses of their removal under the arrangement made with General Scott, in 1838. I also directed him to settle with you the terms of a new treaty, that would be satisfactory to the Cherokees and just to both parties. The claim for arrearages has been already settled, and gives proof of the justice which I desire to observe towards you and your people. I still propose, at a future day, to negotiate with you a new treaty, which the importance of your speedy return to your homes, to meet the grand council of your nation, will not allow at this time to be done; but you may assure your people that, so far as I shall have any power or influence to effect such results, not justice merely shall be done them, but that a liberal and generous course of policy shall be adopted towards them. Upon the ratification of the treaty contemplated, which shall give to the Cherokee nation full indemnity for all wrongs which they may have suffered, establish upon a permanent basis the political relations between them and the people of the United States, guaranty their lands in absolute fee simple, and prescribe specific rules in reference to subjects of the most interesting character to them and their remotest posterity, a new sun will have dawned upon them, in whose brightness their permanent happiness and true

glory may be read by the whole world; and I shall rejoice to have been the President under whose auspices these great and happy results shall have been produced.

[L. s.]

JOHN TYLER.

By the President:

A. M. LEA,

Acting Secretary of War.

To JOHN ROSS, DAVID VANN, and Capt. JOHN BERGE,
Delegation of the Cherokee Nation.

THE
CONSTITUTION AND LAWS
OF
THE CHEROKEE NATION:

PASSED AT TAH-LE-QUAH, CHEROKEE NATION, 1839.

ACT OF UNION BETWEEN THE EASTERN AND WESTERN CHEROKEES.

WHEREAS our fathers have existed, as a separate and distinct nation, in the possession and exercise of the essential and appropriate attributes of sovereignty, from a period extending into antiquity beyond the records and memory of man: AND WHEREAS these attributes, with the rights and franchises which they involve, remain still in full force and virtue, as do also the national and social relations of the Cherokee people to each other and to the body politic, excepting in those particulars which have grown out of the provisions of the treaties of 1817 and 1819 between the United States and the Cherokee nation, under which a portion of our people removed to this country and became a separate community: But the force of circumstances having recently compelled the body of the Eastern Cherokees to remove to this country, thus bringing together again the two branches of the ancient Cherokee family, it has become essential to the general welfare that a union should be formed, and a system of government matured, adapted to their present condition, and providing equally for the protection of each individual in the enjoyment of all his rights:

Therefore we, the people composing the Eastern and Western Cherokee nation, in national convention assembled, by virtue of our original and inalienable rights, do hereby solemnly and mutually agree to form ourselves into one body politic, under the style and title of the Cherokee nation.

In view of the union now formed, and for the purpose of making satisfactory adjustments of all unsettled business which may have arisen before the consummation of this union, we agree that such business shall be settled according to the provisions of the respective laws under which it originated, and the courts of the Cherokee nation shall be governed in their decisions accordingly. Also, that the delegation authorized by the Eastern Cherokees to make arrangements with Major General Scott for their removal to this country shall continue in charge of that business, with their present powers, until it shall be finally closed. And also that all rights and title to public Cherokee lands on the east or west of the river Mississippi, with all other public interests which may have vested in either branch of

the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee nation, as constituted by this union.

Given under our hands, at Illinois Camp-ground, this 12th day of July, 1839.

By order of the National Convention :

GEORGE LOWREY,

President of the Eastern Cherokees.

GEORGE GUESS, his + mark,

President of the Western Cherokees.

Eastern Cherokees. { R. TAYLOR, V. P.,
JAMES BROWN, V. P.,
TE-KE-CHU-LASKEE, V. P.,
GEORGE HICKS,
JOHN BENGE,
THOMAS FOREMAN,
ARCHIBALD CAMPBELL,
JESSE BUSHYHEAD,
LEWIS ROSS,
EDWARD GUNTER,
TE-NAH-LA-WESTAH,
STEPHEN FOREMAN,
DANIEL McCOY.

By order of the National Convention :

JNO. ROSS,
Principal Chief Eastern Cherokees.

GOING SNAKE,
Speaker of Council.

Western Cherokees. { TOBACCO WILL, V. P.,
DAVID MELTON, V. P.,
JOHN DREW, V. P.,
GEORGE BREWER,
THOMAS CANDY,
MOSES PARRIS,
JAMES CAMPBELL,
LOONEY RILEY,
CHARLES GOARD,
LEWIS MELTON,
YOUNG WOLF,
CHARLES COODY,
AH-STO-LA-TA,
JACK SPEARS,
LOONEY PRICE.

By order of the National Convention : AUGUST 23, 1839.

JOHN LOONEY, his + mark,
Acting Principal Chief Western Cherokees.

The foregoing instrument was read, considered, and approved by us this 23d day of August, 1839 :

Aaron Price, Major Pullum, Young Elders, Deer-track, Young Puppy, Turtle Fields, Joly, The Eagle, The Crying Buffalo, and a great number of respectable old settlers and late emigrants, too numerous to be copied.

CONSTITUTION OF THE CHEROKEE NATION.

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the Cherokee nation : Therefore,

We, the people of the Cherokee nation, in national convention assembled, in order to establish justice, ensure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this constitution for the government of the Cherokee nation.

ARTICLE I.

SEC. 1. The boundary of the Cherokee nation shall be that described in the treaty of 1833, between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.

SEC. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that whenever any citizen shall remove with his effects out of the limits of this nation, and become a citizen of any other Government, all his rights and privileges as a citizen of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to re-admit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the nation, on memorializing the national council for such readmission.

Moreover, the national council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper, to prevent citizens from monopolizing improvements with the view of speculation.

ARTICLE II.

SEC. 1. The power of this government shall be divided into three distinct departments—the legislative, the executive, and the judicial.

SEC. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

SEC. 1. The legislative power shall be vested in two distinct branches—a national committee, and council; and the style of their acts shall be—*Be it enacted by the national council*.

SEC. 2. The national council shall make provision, by law, for laying off the Cherokee nation into eight districts; and if subsequently it should be deemed expedient, one or two may be added thereto.

SEC. 3. The national committee shall consist of two members from each district, and the council shall consist of three members from each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The national council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the national council, or, in case of emergency, by the principal chief.

SEC. 4. Before the districts shall be laid off, any election which may take place shall be by general vote of the electors throughout the nation, for all officers to be elected.

The first election for all the officers of the government—chiefs, executive council, members of the national council, judges, and sheriffs—shall be held at 'Tah-le-quah before the rising of this convention; and the term of service of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SEC. 5. No person shall be eligible to a seat in the national council but a free Cherokee male citizen who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation, as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father or mother's side, shall be eligible to hold any office of profit, honor, or trust, under this government.

SEC. 6. The electors and members of the national council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national council, in going to and returning.

SEC. 7. In all elections by the people, the electors shall vote *viva voce*. All free male citizens who shall have attained to the age of eighteen years shall be equally entitled to vote at all public elections.

SEC. 8. Each branch of the national council shall judge of the qualifications and returns of its own members; and determine the rules of its proceedings; punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but not a second time for the same offence.

SEC. 9. Each branch of the national council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalty as each branch may prescribe.

SEC. 10. The members of the national council shall each receive from the public treasury a compensation for their services, which shall be three dollars per day during their attendance at the national council; and the members of the council shall each receive three dollars per day for their services during their attendance at the national council, provided that the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 11. The national council shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 12. Each member of the national council, before he takes his seat, shall take the following oath, or affirmation: I, A B. do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, treats, or any undue and unlawful means used by myself or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of ———, and that on all questions and measures which may come before me I will so give my vote and

so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of this nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support, and defend the constitution thereof.

SEC. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit, or trust, within this nation.

SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution.

SEC. 15. It shall be the duty of the national council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties, who may choose that summary mode of adjustment.

SEC. 16. No power of suspending the laws of this nation shall be exercised, unless by the national council or its authority.

SEC. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SEC. 18. The national council shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

SEC. 19. All bills making appropriations shall originate in the national committee, but the council may propose amendments or reject the same; all other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 20. All acknowledged treaties shall be the supreme law of the land, and the national council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 21. The council shall have the sole power of impeaching. All impeachments shall be tried by the national committee. When sitting for that purpose, the members shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 22. The principal chief, assistant principal chief, and all civil officers, shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit, under the government of this nation.

The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

ARTICLE IV.

SEC. 1. The supreme executive power of this nation shall be vested in a principal chief, who shall be styled the principal chief of the Cherokee nation.

The principal chief shall hold his office for the term of four years, and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members to the national council.

The returns of the election for principal chief shall be sealed up and directed to the president of the national committee, who shall open and publish them in the presence of the national council assembled. The person having the highest number of votes shall be principal chief; but if two or more shall be equal, and highest in votes, one of them shall be chosen by

joint vote of both branches of the council. The manner of determining contested elections shall be directed by law.

SEC. 2. No person except a natural born citizen shall be eligible to the office of principal chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time, by the qualified electors, in the same manner, for four years, an assistant principal chief, who shall have attained to the age of thirty-five years.

SEC. 4. In case of the removal of the principal chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal chief until the disability be removed or the vacancy filled by the national council.

SEC. 5. The national council may by law provide for the case of removal, death, resignation, or disability of both the principal and assistant principal chiefs, declaring what officer shall then act as principal chief until the disability be removed or a principal chief shall be elected.

SEC. 6. The principal chief and assistant principal chief shall, at stated times, receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive within that period any other emolument from the Cherokee nation or any other government.

SEC. 7. Before the principal chief enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear, or affirm, that I will faithfully execute the duties of principal chief of the Cherokee nation, and will, to the best of my ability, preserve, protect, and defend, the constitution of the Cherokee nation."

SEC. 8. He may, on extraordinary occasions, convene the national council at the seat of government.

SEC. 9. He shall, from time to time, give to the national council information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

SEC. 12. The assistant principal chief shall, by virtue of his office, aid and advise the principal chief in the administration of the government, at all times during his continuance in office.

SEC. 13. Vacancies that may occur in offices, the appointment of which is vested in the national council, shall be filled by the principal chief, during the recess of the national council, by granting commissions which shall expire at the end of the next session thereof.

SEC. 14. Every bill which shall pass both branches of the national council shall, before it becomes a law, be presented to the principal chief; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that branch in which it may have originated, who shall enter the objections at large on their journals, and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the principal chief within five days (Sundays excepted) after the same has been presented to him, it shall become a law in like manner as if he had signed it,

unless the national council, by their adjournment, prevent its return, in which case it shall be a law unless sent back within three days after their next meeting.

SEC. 15. Members of the national council, and all officers, executive and judicial, shall be bound by oath to support the constitution of this nation, and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two branches of the national council, with respect to the time of adjournment, the principal chief shall have power to adjourn the same to such a time as he may deem proper, provided it be not to a period beyond the next constitutional meeting thereof.

SEC. 17. The principal chief shall, during the session of the national council, attend at the seat of government.

SEC. 18. There shall be a council, composed of five persons, to be appointed by the national council, whom the principal chief shall have full power at his discretion to assemble; he, together with the assistant principal chief, and the counsellors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the nation according to law; provided the national council shall have power to reduce the number, if deemed expedient, after the first term of service, to a number not less than three.

SEC. 19. The members of the executive council shall be chosen for the term of two years.

SEC. 20. The resolutions and advice of the council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either branch of the national council, and any counsellor may enter his dissent to the majority.

SEC. 21. The treasurer of the Cherokee nation shall be chosen by a joint vote of both branches of the national council, for the term of four years.

SEC. 22. The treasurer shall, before entering on the duties of his office, give bond to the nation, with sureties to the satisfaction of the national council, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the treasury but by warrant from the principal chief, and in consequence of appropriations made by law.

SEC. 24. It shall be the duty of the treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys, at the annual session of the national council.

ARTICLE V.

SEC. 1. The judicial powers shall be vested in a supreme court, and such circuit and inferior courts as the national council may, from time to time, ordain and establish.

SEC. 2. The judges of the supreme and circuit courts shall hold their commissions for the term of four years, but any of them may be removed from office on the address of two-thirds of each branch of the national council to the principal chief, for that purpose.

SEC. 3. The judges of the supreme and circuit courts shall, at stated times, receive a compensation which shall not be diminished during their

continuance in office ; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this nation or any other power.

SEC. 4. No person shall be appointed a judge of any of the courts until he shall have attained to the age of thirty years.

SEC. 5. The judges of the supreme and circuit courts shall be elected by the national council ; and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the public good, whose powers, duties, and duration in office, shall be clearly designated by law.

SEC. 6. The judges of the supreme court and of the circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. 7. No judge shall sit on trial of any cause, when the parties are connected by affinity or consanguinity, except by consent of the parties.

In case all the judges of the supreme court shall be interested in the issue of any cause, or related to all or either of the parties, the national council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the principal chief.

SEC. 8. All writs and other process shall run "in the name of the *Cherokee nation*," and bear test, and be signed by the respective clerks.

SEC. 9. Indictments shall conclude—"against the peace and dignity of the Cherokee nation."

SEC. 10. The supreme court shall, after the present year, hold its session annually at the seat of government, to be convened on the first Monday of October, in each year.

SEC. 11. In all criminal prosecutions, the accused shall have the right of being heard ; of demanding the nature and cause of the accusation ; of meeting the witnesses face to face ; of having compulsory process for obtaining witnesses in his or their favor ; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage ; nor shall the accused be compelled to give evidence against himself.

SEC. 12. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 13. All persons shall be bailable by sufficient securities, unless for capital offences, where the proof is evident or presumption great.

ARTICLE VI.

SEC. 1. No person who denies the being of a God, or a future state of reward and punishment, shall hold any office in the civil department in this nation.

SEC. 2. The free exercise of religious worship, and serving God, without distinction, shall forever be enjoyed within the limits of this nation: provided that this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this nation.

SEC. 3. When the national council shall determine the expediency of appointing delegates, or other public agents, for the purpose of transacting business with the Government of the United States, the principal chief shall recommend, and, by the advice and consent of the national committee, appoint and commission, such delegates or public agents accordingly. On all matters of interest, touching the rights of the citizens of this nation, which may require the attention of the United States Government, the principal chief shall keep up a friendly correspondence with that Government, through the medium of its proper officers.

SEC. 4. All commissions shall be "in the name and by the authority of the Cherokee nation," and be sealed with the seal of the nation, and signed by the principal chief. The principal chief shall make use of his private seal until a national seal shall be provided.

SEC. 5. A sheriff shall be elected in each district, by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur, subsequent to an election, it shall be filled by the principal chief, as in other cases; and the person so appointed shall continue in office until the next regular election.

SEC. 6. No person shall for the same offence be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the national council to lay and collect taxes.

SEC. 7. The right of trial by jury shall remain inviolate; and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

SEC. 8. The appointment of all officers, not otherwise directed by this constitution, shall be vested in the national council.

SEC. 9. Religion, morality, and knowledge, being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this nation.

SEC. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient; and the principal chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts, at least six months previous to the next general election. And if, at the first session of the national council, after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid, to all intents and purposes, as parts of this constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch, as well when the same are proposed as when they are ratified.

Done in convention at Tah-le-quah, Cherokee nation, this sixth day of September, 1839.

GEORGE LOWREY,
President of the National Convention.

Hair Conrad, his + mark,
John Benge, his + mark,
Thomas Candy,
Archibald Campbell, his + mark,
John Drew,

George Guess, his + mark,
Walter Scott Adair,
Young Elders, his + mark,
Will. Shorey Coodey,
Thomas Foreman,

Jesse Bushyhead
 Richard Taylor,
 Thomas Fox Taylor,
 O-kan-sto-tah Logan, his + mark,
 James Spears, his + mark,
 John Spears,
 Stephen Foreman,
 Sal-la-tee-skee Watts, his + mark,
 Young Glass, his + mark,
 Looney Price,
 Tobacco Will, his + mark,
 Major Pullum, his + mark,
 Moses Parris,
 George Washington Gunter,
 Kenah Logan, his + mark,
 Young Wolf,
 Joseph Martin Lynch.
 George Brewer, his + mark,
 Joshua Buffington,

Jesse Russell,
 John Fletcher Boot, his + mark,
 Crying Buffalo, his + mark,
 Bark Flute, his + mark,
 Oo-la-yo-a, his + mark,
 Soft-shell Turtle, his + mark,
 Edward Gunter,
 Daniel Colston, his + mark,
 Lewis Ross,
 George Hicks,
 Turtle Fields, his + mark,
 Elijah Hicks,
 Tah-lah-see-nee, his + mark,
 James Brown,
 Charles Coodcy,
 Riley Keys,
 Daniel McCoy,
 Lewis Melton.

LAWS OF THE CHEROKEE NATION.

AN ACT for the punishment of criminal offences.

Be it enacted by the National Council, That, in all cases of wilful murder, the offender, upon trial and conviction by the authorized courts of this nation, shall suffer death by hanging; and, when sentence of death shall have been passed, the court shall grant a respite of five days before such criminal may be executed; but if the court, with the citizens generally of that section, shall deem it proper, they may petition the principal chief to pardon such convicted criminal, who may, if the reasons as set forth at large seem to warrant, grant an additional respite for a given number of days, until he can assemble the assistant chief and executive council, who shall duly consider said petitions, with the circumstances and evidence given on trial, and decide by ordering his release and acquittal or execution.

SEC. 2. *Be it further enacted,* That any person who shall, with malice aforethought, assault another with intent to kill, shall, upon conviction thereof, be fined in a sum, for the benefit of the party injured, not less than ten nor exceeding one thousand dollars, at the discretion of the court, with the costs of suit. But if any person shall kill another in self-defence or by accident, without any previous intent to do the same, he shall not be held accountable for such act, and be exempted from any fine or punishment whatever.

SEC. 3. *Be it further enacted,* That upon trial and conviction of any person charged with the offence of having committed a rape on any female, he shall be punished with one hundred lashes on the bare back; and upon the conviction of any negro for the aforesaid offence against any free female, not of negro blood, he shall suffer death by hanging.

SEC. 4. *Be it further enacted*, That any female who shall be found guilty of having committed infanticide, or being accessory thereto, shall, upon conviction thereof, be punished with not less than twenty-five nor exceeding fifty lashes.

TAH-LE-QUAH, CHEROKEE NATION, 19th September, 1839.

	W. SHOREY COODEY, <i>President National Committee.</i>
Concurred:	YOUNG WOLF, <i>Speuker Nat. Council.</i>
	DAVID CARTER, <i>Clerk Nat. Council.</i>
Approved:	JOHN ROSS.

AN ACT for the punishment of thefts, and other crimes.

Be it enacted by the National Council, That any person who shall be convicted of stealing a horse, mule, jack, or jenny, shall be punished by not less than thirty-nine nor more than one hundred stripes on the bare back, and compelled to make payment to the amount of damages or injury sustained, if such stolen property be not restored, for the benefit of the person so injured. And for all other property which may be stolen, upon conviction of the party so offending, the punishment shall be in proportion to the magnitude of the offence, at the discretion of the court, and judgment against the offender for damages to the party injured.

SEC. 2. *Be it further enacted*, That if any person shall enslave, or sell or dispose of in any manner any free person, for the purpose of enslaving the same, such person so offending shall, upon conviction thereof, be punished with corporeal infliction, as provided in the section above, and be compelled to make ample remuneration by such compensation as the court may determine.

SEC. 3. *Be it further enacted*, That if any person shall wilfully and maliciously burn the house or other property of another, or otherwise kill or destroy the property of any person, for the purpose of injuring or gratifying a spirit of revenge, such offender, upon conviction, shall be punished in like manner as provided for above, and required to satisfy all damages sustained by the party injured; and, if said party requires it, the court shall cause such offender to give bond, with surety, for good behavior for the next twelve months.

SEC. 4. *Be it further enacted*, That any person who shall employ another, or aid or abet in the perpetration of any criminal offence, upon conviction thereof, such person or persons shall suffer such punishment as may be inflicted upon the principal offender, and be likewise subject to the same judgment for damages.

TAH-LE-QUAH, CHEROKEE NATION, 19th September, 1839.

	W. SHOREY COODEY, <i>Pres. Nat. Committee.</i>
Concurred:	YOUNG WOLF, <i>Speaker Nat. Council.</i>
	DAVID CARTER, <i>Clerk Nat. Council.</i>
Approved:	JOHN ROSS.

AN ACT to prevent amalgamation with colored persons.

Be it enacted by the National Council, That intermarriage shall not be lawful between a free male or female citizen with any slave or person of color, not entitled to the rights of citizenship under the laws of this nation, and the same is hereby prohibited, under the penalty of such corporeal punishment as the courts may deem it necessary and proper to inflict, and which shall not exceed fifty stripes for every such offence; but any colored male who may be convicted under this act shall receive one hundred lashes.

TAH-LE-QUAH, CHER. NATION, 19th September, 1839.

	W. SHOREY COODEY,
	<i>Pres. Nat. Committee.</i>
Concurred :	YOUNG WOLF,
	<i>Speaker Nat. Council.</i>
	DAVID CARTER,
	<i>Clerk Nat. Council.</i>
Approved :	JOHN ROSS.

AN ACT to fill vacancies in the National Council.

Be it enacted by the National Council, That the principal chief be, and he is hereby, authorized, upon the notification of either branch of the national council, during its present session, that a vacancy exists, either by death, resignation, or refusal to serve, of any of the members elected, to issue a writ of election to fill such vacancy, and which election shall be held at Tah-le-quah, by general vote of all the people present, before the adjournment of the present session of the national council; and after such adjournment this act shall have no force or effect.

TAH-LE-QUAH, CHER. NATION, 20th September, 1839.

	W. SHOREY COODEY,
	<i>Pres. Nat. Committee.</i>
Concurred :	YOUNG WOLF,
	<i>Speaker Nat. Council.</i>
	DAVID CARTER,
	<i>Clerk Nat. Council.</i>
Approved :	JOHN ROSS.

AN ACT providing for attachments.

SEC. 1. *Be it enacted by the National Council,* That it shall be lawful, whenever any person may have a claim or debt against another, and is apprehensive that he is about to abscond or dispose of his property, so as to be beyond the reach of law, to make oath to that effect before any of the judges or clerks of the respective districts, and it shall be the duty of the judge or clerk, before whom such oath may be made, to issue an attachment forthwith, to be placed in the hands of any lawful officer, whose duty it shall be to attach as much property of the debtor as will satisfy the demand, if to be found, and to take the same into his safe keeping, until there

shall be a decision made on the case agreeably to law, unless the said debt-
or shall secure to the creditor the debt, by giving bond with sufficient
security.

TAH-LE-QUAH, CHER. NATION, *September 21, 1839.*

Concurred:

W. SHOREY COODEY,
Pres. Nat. Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Approved:

WHEREAS a complaint has been made by Brevet Brig. General M. Arbuckle, U. S. A., that the life of Mr. Denningburg, contractor's agent for issuing rations to the late emigrants, has been threatened, and that in consequence the business of issuing had been obstructed: Therefore,

Be it enacted by the National Council, That W. S. Adair, Thomas F. Taylor, and George West, or either of them, be, and are hereby, authorized and empowered to adopt such measures, by summoning a sufficient number of persons, if necessary, to preserve order at the depot at W. S. Adair's for issuing rations, and to prevent any improper or unlawful conduct on the part of any person from obstructing any agent in the discharge of his business, and to prevent the introduction of ardent spirits about the premises of such depot during issues, under the penalty of wasting the same for every such offence. They are further authorized and directed to inquire into the conduct of Lewis Webber towards the contractor's agent, and to report the same to the national council during the present session.

TAH-LE-QUAH, CHER. NATION, *September 23, 1839.*

Concurred:

W. SHOREY COODEY,
Pres. Nat. Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Approved:

AN ACT establishing the Judiciary.

SEC. 1 *Be it enacted by the National Council,* The courts established under the government of this nation shall have cognizance of all suits arising under the constitution and laws of the Cherokee nation, and cases originating under the laws and usages of the Eastern Cherokees, as existing previous to their removal, and those in existence among the Western Cherokees prior to the act of union dated 12th day of July, 1839, and the adjudication of all questions shall be according to the provisions of the respective laws under which they originated.

SEC. 2. The commencement of all suits shall be by summons, obtained

from the clerk of the respective court in which such suit is to be tried, and of the district in which the party sued shall be resident, and which summons shall state the nature of the case upon which proceedings are founded, and be served by some lawful officer at least thirty days before the holding of said court; and such summons shall be returned to the clerk with a certificate of service, and the court shall give judgment as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such summons or process.

SEC. 3. The trial of all causes at law, civil and criminal, shall be by jury, except in the trial of such cases by the supreme court as may be brought before them by appeal from the circuit courts.

No person under the age of twenty-one years, or above the age of sixty, nor any person who may be convicted, after the passage of this act, of felony or perjury, shall be summoned on a jury.

The judge of each respective court shall, at least thirty days before the time fixed for holding such court, make out and furnish the sheriff of the district with a list of names, who shall be summoned by him or his deputy to act as jurors, and the clerk or judge shall administer the following oath: "You and each of you do solemnly swear that you will well and truly try all issues which shall be submitted to you and left to your decision by the court, during the present term, and true verdicts give according to the evidence;" which oath shall authorize said jury to try all issues that may be submitted during that term of said court. Nine persons shall constitute a jury in any of the courts for the trial of all civil suits, and any six of whom may render a verdict; but in all criminal cases there shall be twenty-four persons summoned, and the criminal, in open court, may challenge or object, if he chooses, to one-half of this number as the clerk shall call their names. The remaining twelve shall form a jury for the trial of any criminal accusation, and be qualified for that special case, and no verdict shall be rendered but by the unanimous assent of the whole; and in case of disagreement, and the court being satisfied that such particular jury cannot agree, they shall be discharged from further consideration of such case, and another jury summoned in their stead for the trial of that case.

In charging the jury, in all cases the judge shall state the testimony and the law.

SEC. 4. Each court shall have authority to prescribe such rules and regulations for the transaction of business, and to preserve order during its session, as may be deemed necessary and proper, and which shall not be in violation of law; and for every contempt or disrespect offered, or obstruction of business by the improper conduct of individuals, the court may impose a fine on any such person so behaving, and which shall not be less than one nor exceeding fifty dollars at the discretion of the court.

SEC. 5. Each court shall have the right of appointing its own clerk, whose term of service shall be the same as that of the judge or judges of such respective court; and such clerk shall be liable to dismissal for improper behavior or want of attention to the duties of his office.

SEC. 6. *Be it further enacted*, Whenever final judgment is rendered in any case by a court, the clerk thereof shall, within five days after the adjournment of the court, issue an execution, directed to the sheriff of the district, to proceed and make collection from the party cast to the amount of such judgment and costs; and such execution shall be returnable at the

next term of the said court, with a certificate of the proceedings had thereon, and which shall be recorded by the clerk of the said court.

The clerk of each court, before he enters on the duties of his office, shall take the following oath: "I, A B, do solemnly swear that I will well and truly discharge the duties of clerk of the — court according to the best of my skill and judgment, and make correct entries and records of all causes, judgment, and proceedings of the court, and carefully file and preserve all books and papers whatsoever which shall be delivered to me in charge, or otherwise come into my hands or possession by virtue of my office, and faithfully execute the duties thereof without favor, affection, or partiality."

SEC. 7. Any of the judges shall have power to call and hold a special court for the trial of criminals. Witnesses shall be allowed one dollar each day for attendance at court under a summons to give testimony, and the party against whom judgment is rendered shall pay the expense of witnesses on both sides, and no further cost shall attach to any suit.

THE SUPREME COURT.

SEC. 1. *Be it further enacted*, That the supreme court of the Cherokee nation shall consist of one chief justice and four associate judges, any three of whom shall form a quorum to transact business and decide cases. In the absence of the chief justice, the principal chief may nominate one of the other judges to act as chief justice *pro tempore*.

SEC. 2. The jurisdiction of this court shall be limited to such cases as may have been decided in the circuit courts, and, by appeal, brought before them for trial, except in such other cases as may hereafter be provided for by law.

In the trial of all appealed cases, the court shall be confined to such written testimony as may be transmitted with each respective case from the circuit court, unless satisfactory showing is made, by either party that it was impossible to have obtained the personal attendance of some witness or witnesses whose testimony is important; in that event, additional testimony shall be permitted to either party. Either party to a suit in this court may, at the first term after such suit is placed on the docket, for satisfactory reasons, or the parties by mutual consent, lay over such cause until the next term, but no case shall be laid over a second time.

SEC. 3. *Be it further enacted*, That any judge of the supreme court shall be authorized to call and hold a special court for the trial of any person or persons who may be charged with murder.

SEC. 4. It shall be the duty of the clerk to enter on a docket to be kept for that purpose all causes brought by appeal into this court, and to record faithfully all proceedings and decisions in a book, and to preserve with care all papers and books appertaining to the business of the court.

SEC. 5. The court shall designate such officer or officers as may be deemed necessary to attend upon the court during its session for the preservation of order and the execution of its mandates.

THE CIRCUIT COURTS.

SEC. 1. *Be it further enacted*, That there shall be established two judicial circuits, and one judge elected to each circuit.

The following division of the nation into four districts shall continue until otherwise altered by law, to wit:

1. *Neosho district*.—Commencing at the line of Washington county where the Saline road crosses the same, and following said road to the head of Spring creek; thence down the same to Grand river; thence down Grand river to the Arkansas; and thence along the western boundary of the nation, including all the country north and west of the above line.

2. *Sallisaw district*.—Beginning at the line of Washington county, near Wilson's store, where the wagon-road crosses the same by Jack Bean's; thence along said road, by Charles Vann's, down the Sallisaw to the crossing of the creek by Doctor Palmer's; thence south to the top of the mountain, and along the top of the same to a point opposite John L. McCoy's; thence to the crossing of the Sallisaw by the military road, and along said road to Grand river.

3. *Illinois district*.—Commencing at the mouth of Sallisaw creek, and running up the same to the military road; thence along said road to Grand river; and down the same to the Arkansas, including all the country west of this line and the Arkansas.

4. *Lee's Creek*.—Including all the country lying south and east of the above-described lines.

The Northern circuit shall be composed of Neosho and Sallisaw districts, and the Southern of Illinois and Lee's Creek districts; and the following places are designated in each district for holding courts, viz:

In Neosho district, at Sitewakee's village, on Spavinaw.

In Sallisaw district, at Tah-le-quah.

In Illinois district, at Tah-lon-tuskee.

In Lee's Creek district, at George Guess's.

The judges shall hold their respective courts in Neosho and Illinois districts on the first Monday in May and September, and for Sallisaw and Lee's Creek districts on the second Monday in May and September.

SEC. 4. The circuit court shall have complete jurisdiction in all criminal matters, and also in civil cases where the amount at issue is not less than one hundred dollars; but may also try and decide suits, when the amount is less than one hundred and over twenty-five dollars, provided such suit has been brought by appeal from the district court; and all decisions, where the sum does not exceed one hundred dollars, shall be final; but if above that amount, an appeal may be granted to the supreme court, if moved for before the adjournment of such court; and in the trial of all cases, the clerk shall write out in full the testimony which may be given by witnesses of both parties. And in the event of an appeal to the supreme court, such written testimony, with the proceedings and decision of the court, being certified to by the clerk, sealed and marked on the outside, with the nature of the case and the names of the parties, they shall be transmitted by the sheriff of the district, directed to the Chief Justice; and the party so appealing to the supreme court shall be required to enter into bond with security, to the satisfaction of the court, for the maintenance of such suit and payment of all costs.

DISTRICT COURTS.

Be it further enacted, That there shall be established one district court in each of the four districts temporarily provided for in this act, and one

judge for each, elected by joint vote of the national council, whose term of service shall be one year.

The district court shall have complete criminal jurisdiction in all cases not involving the sentence of death, and in all civil matters where the sum at issue does not exceed one hundred dollars; and its decision in all cases, where the sum does not exceed twenty-five dollars, shall be final; when over twenty-five and not over one hundred dollars, an appeal may be granted to the circuit court, and the witnesses again summoned to appear and give testimony in that court.

Each party taking an appeal shall be required to give bond and security for the maintenance of such suit, and payment of all costs which may attach thereto.

The district courts shall be held at the respective places designated for holding the circuit courts, and on the first Monday of January and July.

SHERIFFS.

Be it further enacted, That there shall be one sheriff in each district, who shall enter into bond, with security to the amount of one thousand dollars, for the faithful execution of the duties of his office, and take the following oath: "I, A B, having been elected to the office of sheriff of ——— district, do solemnly swear that I will well and truly execute the duties of my said office, according to the best of my skill and understanding, without fraud or partiality." It shall be the duty of the sheriffs to attend upon the courts which may be held in their respective districts; to serve all summons or other process which may be placed in their hands, and to take all necessary and proper measures in the execution of the judgments of the courts; and also to arrest, and cause to be tried, all persons who may be charged with criminal offences; and in case of resistance, or strong apprehensions of resistance, the sheriff shall summon such a number of citizens as may be necessary to arrest any person or persons against whom criminal charge may be alleged, and to guard the same until convicted or acquitted, unless the judge, during the recess of court, before whom such person may be brought, shall sooner discharge them upon such bail for his or their attendance at the next term as may be deemed sufficient and proper. Should any person charged with a criminal violation of law resist any lawful officer or persons authorized to cause his arrest, while in the discharge of his or their duty, and such persons should be killed on account of such unlawful resistance, such officer or other person shall not be held guilty of murder.

It shall also be the duty of such sheriff or sheriffs as may be designated by the Chief Justice for that purpose to attend upon the supreme court during its session.

Each sheriff may appoint a deputy from under his own hand, and shall notify the district judge of such appointment; and such sheriff shall be responsible for the conduct and behavior of such deputy so appointed by him. When the property of any person is levied upon to satisfy an execution issued upon the judgment of a court, the sheriff shall advertise the same at three of the most public places in the district, to be sold to the highest bidder; and for all sums not exceeding fifty dollars, such sale shall

be advertised ten days; and for all sums above fifty dollars, twenty days' notice shall be given.

TAH-LE-QUAH, CHER. NATION, *September 23, 1839.*

Concurred :

W. SHOREY COODEY,
President Nat. Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Approved :

AN ACT in relation to contracts.

Be it enacted by the National Council, That all lawful contracts shall be binding ; and any person upon failure to comply with the terms of such contracts shall be liable to a suit at law, in any of the courts having jurisdiction in the matter, to be instituted by the creditor; and if upon trial the law and testimony shall justify, judgment shall be rendered in favor of such creditor for the amount which may be due by the defendant.

And in all cases where a debt may be contracted, and it is agreed that property or trade shall be taken in payment of such debt, judgment shall be rendered accordingly; and the officer shall proceed to levy on the property of such debtor, and to summons two disinterested citizens, who shall be sworn by him, to aid in the valuation of such property fairly and impartially; and when such property is so valued by the sheriff and such other persons, the creditor shall receive the same at such valuation as may be fixed by them.

TAH-LE-QUAH, CHER. NATION, *September 24, 1839.*

Concurred :

W. SHOREY COODEY,
President Nat. Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Approved :

AN ACT relative to estates and administrators.

Be it enacted by the National Council, That all written or verbal wills of deceased persons, when proved to the satisfaction of the judge of the district court for the district in which deceased person resided, shall be valid; and if by such will any person or persons are designated to manage the business of any estate so left, such person shall receive from said judge a written appointment for that purpose, and be required to enter into bond, with sufficient security, for the faithful management of such business, in accordance with the provisions of said will, and for the careful preservation of all property and effects so left, and all such wills shall be registered by the clerk of the district court; and all persons so appointed shall furnish, on oath, a schedule and description of all property and effects belonging to such estate, and which shall likewise be registered by said clerk.

SEC. 2. *Be it further enacted*, That when a person dies without having made a will, the district judge shall grant letters of administration to some competent and responsible individual, to be selected from among the relatives of the deceased, if the safety of such property as may be left seem to warrant, and who shall be required to enter into bond, &c., as provided above; and the property and effects shall belong equally to the children. The widow, also, of such deceased person shall be entitled to an equal share with the children, to be apportioned to her whenever she requires it, and the settlement of the business will safely permit, and the residue to the children as they become of age, to wit: males at twenty-one years, and females at eighteen years, unless by marriage it may be sooner apportioned. And in case such widow shall again marry and hold her property separately from the husband, and shall die without issue from her second marriage, such property shall be divided among the aforesaid children. And in all cases where the wife dies holding property as above, and has children, and the husband survives, such property shall likewise be equally apportioned among the children and the husband; and if such husband should again marry and die without issue from such second marriage, his property shall be equally divided among his children.

Any administrator who may have charge of an estate shall settle all just debts due out of its effects, and collect all outstanding claims in its favor. He shall cause public notice to be given, by written advertisements, for all persons having demands against such estate to bring them forward for settlement within twelve months; otherwise they shall be void and not recoverable by law.

TAH-LE-QUAH, CHER. NATION, 24th September, 1839.

W. SHOREY COODEY,
President Nat. Committee.

Concurred:

YOUNG WOLF,
Speaker Nat. Council.

DAVID CARTER,
Clerk Nat. Council.

Approved:

JOHN ROSS.

AN ACT regulating settlements on the public domain.

Be it enacted by the National Council, That no person shall be permitted to settle or erect any improvement within one-fourth of a mile of the house, field, or other improvements of another citizen, without his, her, or their consent, under the penalty of forfeiting such improvement and labor for the benefit of the original settler; provided, it may be lawful, however, where a settler has a field one-half mile or more from his residence, and where there may be a spring or running water and timber, for another citizen to improve and settle one hundred yards from such field so situated.

TAH-LE-QUAH, CHER. NATION, 24th September, 1839.

W. SHOREY COODEY,
President Nat. Committee.

Concurred:

YOUNG WOLF,
Speaker Nat. Council.

DAVID CARTER,
Clerk Nat. Council.

Approved:

JOHN ROSS.

AN ACT to exempt certain property from sale.

Be it enacted by the National Council, That the following description of property shall be exempted from sale to satisfy any debt or judgment, and shall be reserved for the benefit of the owner thereof, viz : one horse, or, in lieu thereof, one yoke of oxen, one cow and calf, one sow and pigs, farming utensils, household and kitchen furniture, and fifty bushels of corn, one stack of fodder, and fire-arms, and one saddle and bridle. And it shall not be lawful for an officer to levy on any of the above-mentioned property.

TAH-LE-QUAH, CHER. NATION, 24th September, 1839.

	W. SHOREY COODEY, <i>President National Committee.</i>
Concurred :	YOUNG WOLF, <i>Speaker Nat. Council.</i>
	DAVID CARTER, <i>Clerk Nat. Council.</i>
Approved :	JOHN ROSS.

AN ACT defining lawful fences.

Be it enacted by the National Council, That a fence ten rails high, with cracks not exceeding four inches wide, for four rails up said fence, shall be considered a lawful fence. And a fence eight good rails high, well staked and ridged, shall also be considered a lawful fence. And the horse, ox, or other beast, or hog, of any person or persons whomsoever, breaking into the field of any person having a lawful fence, the owner of such property shall be responsible for the damages done, and the courts of the several districts shall have cognizance of every such case.

This act not to take effect until the 1st day of March, 1840.

TAH-LE-QUAH, CHER. NATION, 25th September, 1839.

	W. SHOREY COODEY, <i>President National Committee.</i>
Concurred :	YOUNG WOLF, <i>Speaker Nat. Council.</i>
	DAVID CARTER, <i>Clerk Nat. Council.</i>
Approved :	JOHN ROSS.

AN ACT authorizing the arbitration of cases.

Be it enacted by the National Council, That it shall be lawful for parties to settle and adjust any dispute or controversy by arbitration ; and when that mode is determined upon, the parties shall place in the hands of each arbiter appointed by them a written notice to that effect, signed jointly by such parties, and they shall be sworn by the judge or clerk of the circuit or district court, before they proceed to arbitrate and decide upon such case, and their decision shall be final, and shall be recorded in

the office of the clerk of such court as would properly have had cognizance of the matter, and execution shall issue by him to the sheriff, the same as if judgment had been obtained in such court, unless the arbitrators may have decided otherwise.

TAH-LE-QUAH, CHER. NATION, 26th September, 1839.

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Concurred :

Approved :

AN ACT relative to schools.

Be it enacted by the National Council, That all facilities and means for the promotion of education, by the establishment of schools, and the diffusion of general intelligence among the people, shall be afforded by legislation, commensurate with the importance of such objects, and the extent and condition of the public finances; and all schools which may be and are now in operation in this nation shall be subject to such supervision and control of the national council as may be provided.

SEC. 2. *Be it further enacted,* That in future no missionary school or establishment shall be located or erected, without permission being first obtained from the national council for such purpose, and the place designated by law for the same, with such other general regulations as may be deemed necessary and proper, either as conducive to its particular usefulness, or conformity to national rights and interest.

SEC. 3. *Be it further enacted,* That, in furtherance of the design of this act, a committee of three persons shall be appointed, by nomination of the principal chief to the national committee, whose duty it shall be to mature and prepare a system of general education by schools, with such laws for its establishment and promotion as may be necessary, and to report the same to the principal chief before the next annual meeting of the national council, who shall submit such report with his views in relation thereto; said committee shall also visit all the schools in the nation, examine the plan upon which they are taught, the improvement of pupils, and utility of each, and report such information to the principal chief, to be submitted before the national council.

TAH-LE-QUAH, CHER. NATION, 26th September, 1839.

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Concurred :

Approved :

AN ACT respecting garnishees.

Be it enacted by the National Council, That when judgment is rendered, and the officer in whose hands an execution may be placed shall fail to find any property or effects in the possession of the debtor to satisfy the same, and has cause to believe that some other person has in hands property or effects belonging to said debtor, the officer shall proceed to make inquiry of such person, and if such property or effects shall be pointed out, he shall proceed to make levy; but if such person shall refuse to give such information as may be satisfactory, the officer shall summon him before the judge or clerk of the court where judgment was obtained, who shall require him on oath to answer the charge of holding in his hands the property or effects of such debtor.

And if any person shall have or place his property or effects in the possession of another person, before judgment is obtained, it shall be lawful to garnishee the person holding the same, as above, and to take such measures as will prevent the disposal or removal of the same until proceedings may be had in the proper court on any alleged debt owing by the owner of such property or effects.

TAH-LE-QUAH, CHER. NATION, 26th September, 1839.

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker Nat. Council.

DAVID CARTER,
Clerk Nat. Council.

Approved :

JOHN ROSS.

AN ACT to prevent the introduction and vending of ardent spirits.

Be it enacted by the National Council, That the introduction or vending of ardent spirits in this nation shall not be lawful; and any and all persons are prohibited from bringing or engaging in the traffic of ardent spirits, within five miles of the national council during its session, or one mile from any of the places designated for holding courts, during their session, or one mile of any public gathering or meeting in the nation, under the penalty of having the same wasted or destroyed by any lawful officer or authorized person, by the sheriff, for such purpose.

TAH-LE-QUAH, CHER. NATION, September 28, 1839.

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker Nat. Council.

DAVID CARTER,
Clerk Nat. Council.

Approved :

JOHN ROSS.

AN ACT to legalize intermarriage with white men.

Be it enacted by the National Council, That, from and after the passage of this act, any white man, or citizen of the United States, who may come into this nation and take a Cherokee woman to wife, he shall first be required to obtain a written license for that purpose from the clerk of either the circuit or district court, and then be lawfully married by some minister of the Gospel or other authorized person; and the judges of any of the courts shall be authorized to perform the marriage ceremony.

And any such white man, or citizen of the United States, who shall refuse or fail to comply with the provisions of this act, and take up with a Cherokee woman, or any such person who may lawfully marry and then abandon his wife, shall not be entitled to any of the rights and privileges of a citizen of this nation, and shall be liable to the provisions of the intercourse laws of the United States. Any person so obtaining a license shall pay the clerk a fee of five dollars; and the said clerk shall register all such licenses, and the person performing the marriage ceremony shall certify the same on the license, which shall be returned to the clerk, and who shall record the same. And if any such person or citizen, as aforesaid, should come into the nation and marry, and the fact should afterwards be established that he left a wife elsewhere, he shall be subject to removal as an intruder.

TAH-LE-QUAH, CHER. NATION, *September 28, 1839.*

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Concurred :

Approved :

AN ACT granting permission to certain persons to establish missionary stations.

Be it enacted by the National Council, That permission be, and the same is hereby, granted to the Board of the Moravian Society, at Salem, North Carolina, to erect a missionary station in this nation for the purpose of recommencing their labors in the instruction and improvement of the Cherokee people. Permission is also granted to the Rev. Evan Jones, under the direction of the Baptist Board, to enter and reside in the nation for the same purpose. Permission is likewise granted to Dr. Eleazer Butler and the Rev. D. S. Butrick, under the direction of the American Board of Foreign Missions, to reside in the nation for the same purpose; and that Dr. Butler be requested by the principal chief to reside at the Rev. S. A. Worcester's until the next session of the nation council.

TAH-LE-QUAH, CHER. NATION, *October 2, 1839.*

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker Nat. Council.
DAVID CARTER,
Clerk Nat. Council.
JOHN ROSS.

Concurred :

Approved :

Whereas the principal chief having this day apprized the national council that an order has been issued from the War Department, directed to M. Stokes, United States agent, to prohibit the residence among the Cherokees of the Rev. Evan Jones, a missionary under the Baptist Board, on account of charges preferred before the Secretary of War, the nature and character of which, however, are not specified or mentioned in said order: Therefore,

Resolved by the National Council, That no complaints or charges, of whatever kind or character, have ever been made to the Hon. Secretary of War, or any other person, either by the authorities of this nation or any authorized person, in behalf of the Cherokee people; and that they are not aware or apprized of any act or conduct upon which complaint or charge may be founded to the prejudice of the aforesaid Rev. E. Jones, he having for many years resided among them, east of the Mississippi, devoted to their instruction and improvement, to their entire satisfaction and approbation: And it is the desire of the people and authorities of this nation that he shall be again permitted to resume his labors in this country.

The principal chief is requested to forward a copy of this resolution to the United States agent, to be reported by him to the War Department.

TAH-LE-QUAH, CHEROKEE NATION, *October 2, 1839.*

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker National Council.
DAVID CARTER,
Clerk National Council.
JOHN ROSS.

Concurred :

Approved :

AN ACT fixing the compensation of the officers of the nation.

Be it enacted by the National Council, That the principal chief be, and he is hereby, allowed, out of the public funds of this nation, a salary of five hundred dollars per annum for his services, and the assistant principal chief three hundred dollars per annum.

The executive counsellors shall each be allowed three dollars per day while in actual service.

The judges of the supreme court shall each be allowed five dollars per day while in service in holding court.

The circuit judges shall be allowed each a salary of two hundred dollars per annum.

The district judges shall be allowed each one hundred dollars per annum.

The clerk of the supreme court shall receive for his services three dollars per day during the session of the supreme court.

The clerks of the circuit courts shall each receive two dollars and fifty cents per day while in actual service.

The clerks of the district courts shall each receive two dollars per day while in actual service.

Each sheriff shall receive two hundred dollars per annum for his services.

Each juror shall be paid one dollar per day.

The national treasurer shall receive for his services a salary of five hundred dollars per annum.

The clerks of the national committee and council shall each receive three dollars per day while in service.

TAH-LE-QUAH, CHEROKEE NATION, *October 4, 1839.*

	W. SHOREY COODEY, <i>President National Committee.</i>
Concurred :	YOUNG WOLF, <i>Speaker National Council.</i>
	DAVID CARTER, <i>Clerk National Council.</i>
Approved :	JOHN ROSS.

Be it enacted by the National Council, That it is expedient to appoint a delegation, consisting of eight persons, to represent the Cherokee people before the Government of the United States, for the purpose of adjusting and bringing to a final close all unsettled business between this nation and the United States Government; and the principal chief be, and he is hereby, requested to accompany said delegation. Each delegate shall receive, out of the public funds of the nation, three dollars per day for his services during his absence on this mission.

The principal chief is hereby authorized to obtain a loan of three thousand dollars, on the credit of the nation, and which sum shall be appropriated towards the necessary expenses of said delegation; and said delegation shall be required to keep a correct account of all necessary expenditures.

TAH-LE-QUAH, CHEROKEE NATION, *October 4, 1834.*

	W. SHOREY COODEY, <i>President National Committee.</i>
Concurred :	YOUNG WOLF, <i>Speaker National Council.</i>
	DAVID CARTER, <i>Clerk National Council.</i>
Approved :	JOHN ROSS.

AN ACT imposing prohibitions with regard to Tah-le-quah, the council ground.

Be it enacted by the National Council, That it shall not be lawful for any person to clear a field, or wastefully destroy the timber, within one-fourth of a mile of Tah-le-quah, the council ground, without special permission of the national council: *Nevertheless,* this act shall not be so construed as to prevent Young Wolf from enlarging his premises on the east side of the hollow and Spring branch, running between said Young Wolf's and Tah-le-quah, the council ground, and also as to prevent any person from the use of timber while attending the national council. But no person whomsoever shall be permitted to cut or destroy any timber within one hundred yards of the fence enclosing the shed and office of the principal

chief, except such timber as may be dead, upon the penalty of paying a fine of five dollars for every such offence.

TAH-LE-QUAH, CHEROKEE NATION, October 4, 1839.

Concurred :

W. SHOREY COODEY,
President National Committee.

YOUNG WOLF,
Speaker National Council.

DAVID CARTER,
Clerk National Council.

Approved :

JOHN ROSS.

Be it enacted by the National Council, That any person who may be lawfully summoned to appear before any of the courts to give testimony, and shall refuse or fail to attend, unless on account of sickness, he shall be fined in a sum not less than twenty-five nor exceeding one hundred dollars, at the discretion of the court.

And any person who may be summoned by an officer to aid in the arrest of a criminal, and shall refuse, unless it be on account of sickness, he shall be fined fifty dollars.

And any fine which may be collected under this act shall be paid into the national treasury.

SEC. 2. *Be it further enacted,* That each of the judges and clerks of the several courts are hereby authorized to administer oaths.

TAH-LE-QUAH, CHEROKEE NATION, October 4, 1839.

Concurred :

W. SHOREY COODEY,
President National Committee.

YOUNG WOLF,
Speaker National Council.

DAVID CARTER,
Clerk National Council.

Approved :

JOHN ROSS.

Be it enacted by the National Council, That all claims against the nation shall be presented before the national committee for investigation, and when allowed, there being now no funds to meet the demands upon the treasury, the national committee shall issue due bills to the respective claimants for the amount due, and which due bills shall be countersigned by the principal chief before they are given out.

TAH-LE-QUAH, CHEROKEE NATION, October 4, 1839.

Concurred :

W. SHOREY COODEY,
President National Committee.

YOUNG WOLF,
Speaker National Council.

DAVID CARTER,
Clerk National Council.

Approved :

JOHN ROSS.

AN ACT requiring the treasurer to give bond.

Be it enacted by the National Council, That the national treasurer shall, before he enters on the duties of his office, enter into bond with surety to the amount of seventy-five thousand dollars; which bond to be executed to the Cherokee nation, and given to the principal chief, and subject to the approval of the national council at its next session.

TAH-LE-QUAH, CHEROKEE NATION, October 4, 1839.

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker National Council.
DAVID CARTER,
Clerk National Council.
JOHN ROSS.

Approved : _____

Be it enacted by the National Council, That the principal chief be, and he is hereby, authorized to select some suitable persons to translate the constitution and laws of this nation into the Cherokee language, and to have the same printed, both in English and Cherokee, for the use and information of the people.

TAH-LE-QUAH, CHEROKEE NATION, October 5, 1839.

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker National Council.
DAVID CARTER,
Clerk National Council.
JOHN ROSS.

Approved : _____

Be it enacted by the National Council, That if any person or persons shall interrupt, by misbehavior, any congregation of Cherokee or white citizens, assembled at any place for divine worship, within the Cherokee nation, such person or persons so offending shall, upon conviction thereof before any of the courts, be fined in a sum not exceeding twenty nor less than five dollars for every such offence, to be adjudged by the court of the district in which such offence may be committed; and if any negro slave shall be convicted of the above offence, he shall be punished with thirty-nine stripes upon the bare back. And all moneys so collected shall be paid over to the national treasury.

TAH-LE-QUAH, CHEROKEE NATION, October 7, 1839.

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker National Council.
DAVID CARTER,
Clerk National Council.
JOHN ROSS.

Approved : _____

Be it enacted by the National Council, That the act fixing the compensation of the officers of the nation, passed 4th October, 1839, be, and the same is hereby, amended, by granting an additional allowance to the com-

pensation of the sheriffs of six per cent. on all collections which may be made by them, under an execution from any of the clerks issued on a judgment, to be recovered of the person against whom such judgment may be made.

TAH-LE-QUAH, CHEROKEE NATION, *October 12, 1839.*

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker National Council.

DAVID CARTER,
Clerk National Council.

Approved :

JOHN ROSS.

Whereas a national convention of the people of the Eastern and Western Cherokees was assembled on the first day of July, 1839, for the purpose of forming a union of the two communities, (brought together by the late removal of the Eastern Cherokees,) and of adopting measures for the preservation of order and the advancement of the general welfare :

And whereas the desired union has been consummated by general consent, and, by the conditions of said union, "all rights and title to public Cherokee lands on the east and west of the river Mississippi, with all other public interests which may have vested heretofore in either branch of the Cherokee family," are declared, "henceforward, to vest, entire and unimpaired, in the Cherokee nation as constituted by this Union :"

And whereas various important questions, and much business with the Government of the United States, both of a public and private character, remain in an unsettled state, and require to be definitively adjusted as early as practicable : Therefore,

Be it enacted by the National Council, That John Ross, principal chief, W. Shorey Coodey, Edward Gunter, Richard Taylor, Joseph M. Lynch, Looney Price, John Looney, Elijah Hicks, and Jesse Busheyhead, be appointed a delegation to represent the Cherokee people before the Government of the United States ; and that they be, and they are hereby, vested with full powers to enter into arrangements with the Government of the United States for the final adjustment of all matters mutually interesting to the United States and to the Cherokee people.

Be it further enacted, That the above-named John Ross, W. Shorey Coodey, Edward Gunter, Richard Taylor, Joseph M. Lynch, Looney Price, John Looney, Elijah Hicks, and Jesse Busheyhead, be, and they are hereby, authorized to apply to the Government of the United States, or to the proper officers thereof, for all sums of money due, or which may become due, to the Cherokee nation, on any account whatever, and to receive and receipt for the same for and on behalf of the said Cherokee nation.

And be it further enacted, That in case of vacancy occurring in the aforesaid delegation, the principal chief of the nation be, and he is hereby, authorized to fill such vacancy by appointment.

TAH-LE-QUAH, CHEROKEE NATION, *October 12, 1839.*

W. SHOREY COODEY,
President National Committee.

Concurred :

YOUNG WOLF,
Speaker National Council.

DAVID CARTER,
Clerk National Council.

Approved :

JOHN ROSS.